

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES MEDICAL MARIJUANA PROGRAM

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3399.) The Governor's Office authorized the notice to proceed through the rulemaking process on January 30, 2012.

[R12-243]

PREAMBLE

- | <u>1. Articles, Parts, or Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|--------------------------|
| R9-17-101 | Amend |
| R9-17-102 | Amend |
| R9-17-103 | Amend |
| R9-17-107 | Amend |
| Table 1.1 | Amend |
| R9-17-109 | Amend |
| R9-17-202 | Amend |
| R9-17-203 | Amend |
| R9-17-302 | Repeal |
| R9-17-303 | Amend |
| R9-17-304 | Amend |
| R9-17-308 | Amend |
| R9-17-309 | Amend |
| R9-17-310 | Amend |
| R9-17-311 | Amend |
| R9-17-312 | Amend |
| R9-17-322 | Amend |
2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(1), 36-136(F)
Implementing statutes: A.R.S. §§ 36-2803, 36-2804, 36-2804.01, 36-2804.06, 36-2815, 41-1073
3. The effective date of the rule:
December 5, 2012
The rules usually would become effective 60 days after filing with the Office of the Secretary of State following approval by the Governor's Regulatory Review Council (GRRC). However, the Department has requested that GRRC approve an immediate effective date for this rulemaking to avoid violating court orders, according to A.R.S. § 41-1032(A)(2).
4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
Notice of Emergency Rulemaking: 18 A.A.R. 1010, May 4, 2012
Notice of Rulemaking Docket Opening 18 A.A.R. 1870, August 3, 2012
Notice of Proposed Rulemaking: 18 A.A.R. 1831, August 3, 2012

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5. The agency's contact person who can answer questions about the rulemaking:

Name: Don Herrington, Assistant Director
Address: Department of Health Services
Public Health Preparedness Services
150 N. 18th Ave., Suite 520
Phoenix, AZ 85007

Telephone: (602) 542-1023

Fax: (602) 364-3266

E-mail: Don.Herrington@azdhs.gov

or

Name: Thomas Salow, Manager
Address: Department of Health Services
Administrative Counsel and Rules
1740 W. Adams St., Suite 203
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Salowt@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

In May 2011, the Department suspended the implementation of the dispensary portion of the Medical Marijuana Act (MMA) in response to the Governor's concern about the possibility of employee liability for abetting a federal crime and her request for clarification about how the MMA interfaces with the federal Controlled Substances Act. With the recent dismissal of that case, the Department planned to implement *Arizona Administrative Code* (A.A.C.), Title 9, Chapter 17 after considering the outcomes of other lawsuits.

In July 2011, a lawsuit was filed alleging that the Department did not have authority for some provisions in the rules. The Arizona Superior Court ruled on the July 2011 lawsuit on January 17, 2012. The court decided that the Department does not have authority to require three-year residency for applicants for a dispensary registration certificate or to set criteria that an applicant has never filed personal or corporate bankruptcy. Further, the Department may not require an applicant to submit Arizona personal income tax returns for the previous three years or to provide documentation that the applicant is current on court-ordered child support; is not delinquent in paying taxes, interest or penalties to the government; does not have an unpaid judgment to the government; and is not in default on a government-issued student loan. The court further ordered the Department to implement the provisions of the MMA "and, if necessary, to promulgate regulations that conform thereto."

As required by Executive Order 2011-05, the Department requested an exception from the rulemaking moratorium, under paragraph (2)(d), to revise the rules for medical marijuana in 9 A.A.C. 17. The Office of the Governor approved the Department's request on January 30, 2012. The Department is revising the rules in 9 A.A.C. 17 to conform to the court order and to establish timelines for the acceptance and processing of applications and the issuing of dispensary registration certificates. In addition, the Department is repealing A.A.C. R9-17-302 that was promulgated for the initial allocation of dispensary registration certificate applications. Because this initial allocation occurred August 2012, this rule is no longer necessary. The Department is making additional changes consistent with current statutory authority and Department policies.

7. A reference to any study relevant to the rules that the agency reviewed and either to relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study related to this rulemaking package.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

As used in this summary, annual costs/revenues are designated as minimal when less than \$1,000; moderate when between \$1,000 and \$10,000; and substantial when greater than \$10,000. Costs are listed as significant when meaningful or important, but not readily subject to quantification. The following economic, small business, and consumer impact summary describes effects directly attributable to this rulemaking, rather than the impact imposed by the statute or current rules.

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The Department believes that the proposed rules, which replace similar emergency rules, will impose a moderate increase in costs to the Department due to the reduced time-frames allowed for the Department to complete the administrative and substantive reviews for dispensary registration certificate applications. Because of the reduced time-frames and the fact that the number of first-time dispensary registration certificate application submissions was unknown when the emergency rules were promulgated, the Department prepared to have other Department personnel ready to assist the Medical Marijuana Program to ensure that the overall required time-frame for processing a dispensary registration certificate was met.

The proposed rules remove requirements for an applicant, principal officer, or board member to submit supplementary documentation used to establish an evaluation criterion for an application. The Department believes the reduction in time that will have been spent verifying and evaluating the supplementary documentation will result in a moderate decrease in cost for the Department. The Department also believes that a moderate benefit will result from the increased clarification of the rules from amending subsection references, ensuring consistent use of terms, and removing all references to the current requirement for supplementary documentation. With the dispensary registration certificate allocation that occurred in August 2012, the Department gained experience with the economic impact of the emergency rulemaking.

The Department anticipates that individuals and businesses will experience a moderate-to-substantial decrease in costs due to the removal of the requirements for supplementary documentation, resulting in less administrative paperwork, and resulting in an increase in the number of applicants, principal officers, and board members accessible who were previously disqualified. Additionally, the Department believes that individuals and businesses will experience a moderate benefit, as a result of the increased clarification of the proposed rules from amending subsection references, ensuring consistent use of terms, and removing all references to the current requirement for supplementary documentation. The Department has not received from individuals or businesses information regarding any decrease in costs or increase in benefits.

The proposed rules do not impose any fees or charges that affect the general fund or any other state agencies. The Department has determined that the proposed rules achieve the greatest possible reduced costs, and that no further reduction of economic impact can be achieved at this time.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

In Section R9-17-303(B)(4), a change was made to remove a redundant phrase. Other minor changes were made as requested by GRRC staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department held an oral proceeding for the proposed rules on September 12, 2012, at which there were no attendees. Additionally, the Department did not receive any written comments on the proposed rules.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit. Arizona Revised Statutes, Title 36, Chapter 28.1 requires individuals or entities that wish to operate a medical marijuana dispensary to apply for a medical marijuana dispensary registration certificate. Hence, a general permit is not used.

b. Whether a federal law is applicable to the subject of the rules, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Although federal law is applicable to the subject of the rules, marijuana, the rules are not more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No person has submitted an analyses to the Department that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

14. Whether the rules were previously made, amended or repealed as emergency rules. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

9 A.A.C. 17 was previously amended by an emergency rulemaking effective April 11, 2012. The emergency rulemaking was completed to comply with court order provided by Arizona Superior Court Case CV 2011-011290. Accord-

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ingly, the Department amended rules to remove requirements for documentation regarding three-year residency; personal or corporate bankruptcy; Arizona personal income tax returns for the previous three years; court-ordered child support; delinquency in paying taxes, interest or penalties to the government; unpaid judgments to the government; and defaults on a government-issued student loan for applicants applying for a dispensary registration certificate. Additionally, the Department was ordered to implement the provisions of the Medical Marijuana Act to issue dispensary registration certificates.

This rulemaking incorporates the rules as amended by the emergency rulemaking. In addition, these rules repeal A.A.C. R9-17-302, Evaluation of Dispensary Registration Certificate Applications. This rule, as amended in the emergency rulemaking, was used in August 2012 for the initial determination and allocation of individual dispensary registration certificate(s) to each CHAA and is no longer required. The rulemaking also amends requirements for the reassignment of a dispensary registration certificate for a CHAA and for the allocation for a CHAA that does not contain a dispensary or whose dispensary has been reassigned. Further, the rule removes the requirement for applicants who have a 20% or more interest in the dispensary to provide documentation from a financial institution demonstrating that the entity applying has at least \$150,000 under the control of the entity or principal officer to begin operations. Lastly, the rules amend and add other references, terms, and language to ensure the rules are clear, concise, and understandable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 17. DEPARTMENT OF HEALTH SERVICES
MEDICAL MARIJUANA PROGRAM**

ARTICLE 1. GENERAL

| | |
|------------|--|
| Section | |
| R9-17-101. | Definitions |
| R9-17-102. | Fees |
| R9-17-103. | Application Submission |
| R9-17-107. | Time-frames |
| Table 1.1. | Time-frames |
| R9-17-109. | Notifications and Void Registry Identification Cards |

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

| | |
|------------|--|
| Section | |
| R9-17-202. | Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver |
| R9-17-203. | Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card |

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

| | |
|------------|---|
| Section | |
| R9-17-302. | Evaluation of Dispensary Registration Certificate Applications <u>Repealed</u> |
| R9-17-303. | Dispensary Registration Certificate Allocation Process |
| R9-17-304. | Applying for a Dispensary Registration Certificate |
| R9-17-308. | Renewing a Dispensary Registration Certificate |
| R9-17-309. | Inspections |
| R9-17-310. | Administration |
| R9-17-311. | Submitting an Application for a Dispensary Agent Registry Identification Card |
| R9-17-312. | Submitting an Application to Renew a Dispensary Agent's Registry Identification Card |
| R9-17-322. | Denial or Revocation of a Dispensary Registration Certificate |

ARTICLE 1. GENERAL

R9-17-101. Definitions

In addition to the definitions in A.R.S. § 36-2801, the following definitions apply in this Chapter unless otherwise stated:

1. "Acquire" means to obtain through any type of transaction and from any source.
2. "Activities of daily living" means ambulating, bathing, dressing, grooming, eating, toileting, and getting in and out of bed.
3. "Amend" means adding or deleting information on an individual's registry identification card that affects the individual's ability to perform or delegate a specific act or function.
4. "Batch" means a specific lot of medical marijuana grown from one or more seeds or cuttings that are planted and har-

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- vested at the same time.
5. "Batch number" means a unique numeric or alphanumeric identifier assigned to a batch by a dispensary when the batch is planted.
 6. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
 7. "CHAA" means a Community Health Analysis Area, a geographic area based on population, established by the Department for use by public health programs.
 8. "Change" means adding or deleting information on an individual's registry identification card that does not substantively affect the individual's ability to perform or delegate a specific act or function.
 9. "Commercial device" means the same as in A.R.S. § 41-2051.
 10. "Cultivation site" means the one additional location where marijuana may be cultivated, infused, or prepared for sale by and for a dispensary.
 11. "Current photograph" means an image of an individual, taken no more than 60 calendar days before the submission of the individual's application, in a Department-approved electronic format capable of producing an image that:
 - a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
 - b. Is 2 inches by 2 inches in size;
 - c. Is in natural color;
 - d. Is a front view of the individual's full face, without a hat or headgear that obscures the hair or hairline;
 - e. Has a plain white or off-white background; and
 - f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
 12. "Denial" means the Department's final decision not to issue a registry identification card, a dispensary registration certificate, ~~an approval to operate a dispensary~~, or an approval of a change of dispensary or a dispensary's cultivation site location, to an applicant because the applicant or the application does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
 13. "Dispensary" means the same as "nonprofit medical marijuana dispensary" as defined in A.R.S. § 36-2801.
 14. "Dispensary agent" means the same as "nonprofit medical marijuana dispensary agent" as defined in A.R.S. § 36-2801.
 15. "Edible food product" means a substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
 16. "Enclosed area" when used in conjunction with "enclosed, locked facility" means outdoor space surrounded by solid, 10-foot walls, constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, and a 1-inch thick metal gate.
 17. "Entity" means a "person" as defined in A.R.S. § 1-215.
 18. "Generally accepted accounting principles" means the set of financial reporting standards established by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or another specialized body dealing with accounting and auditing matters.
 19. "In-state financial institution" means the same as in A.R.S. § 6-101.
 20. "Legal guardian" means an adult who is responsible for a minor:
 - a. Through acceptance of guardianship of the minor through a testamentary appointment or an appointment by a court pursuant to A.R.S. Title 14, Chapter 5, Article 2; or
 - b. As a "custodian" as defined in A.R.S. § 8-201.
 21. "Medical record" means the same as:
 - a. "Adequate records" as defined in A.R.S. § 32-1401,
 - b. "Adequate medical records" as defined in A.R.S. § 32-1501,
 - c. "Adequate records" as defined in A.R.S. § 32-1800, or
 - d. "Adequate records" as defined in A.R.S. § 32-2901.
 22. "Out-of-state financial institution" means the same as in A.R.S. § 6-101.
 23. "Private school" means the same as in A.R.S. § 15-101.
 24. "Public place":
 - a. Means any location, facility, or venue that is not intended for the regular exclusive use of an individual or a specific group of individuals;
 - b. Includes, but is not limited to:
 - i. Airports;
 - ii. Banks;
 - iii. Bars;
 - iv. Child care facilities;
 - v. Child care group homes during hours of operation;

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- vi. Common areas of apartment buildings, condominiums, or other multifamily housing facilities;
- vii. Educational facilities;
- viii. Entertainment facilities or venues;
- ix. Health care institutions, except as provided in subsection (24)(c);
- x. Hotel and motel common areas;
- xi. Laundromats;
- xii. Libraries;
- xiii. Office buildings;
- xiv. Parking lots;
- xv. Parks;
- xvi. Public transportation facilities;
- xvii. Reception areas;
- xviii. Restaurants;
- xix. Retail food production or marketing establishments;
- xx. Retail service establishments;
- xxi. Retail stores;
- xxii. Shopping malls;
- xxiii. Sidewalks;
- xxiv. Sports facilities;
- xxv. Theaters; and
- xxvi. Waiting rooms; and
- c. Does not include:
 - i. Nursing care institutions as defined in A.R.S. § 36-401,
 - ii. Hospices as defined in A.R.S. § 36-401,
 - iii. Assisted living centers as defined in A.R.S. § 36-401,
 - iv. Assisted living homes as defined in A.R.S. § 36-401,
 - v. Adult day health care facilities as defined in A.R.S. § 36-401,
 - vi. Adult foster care homes as defined in A.R.S. § 36-401, or
 - vii. Private residences.
- 25. "Public school" means the same as "school" as defined in A.R.S. § 15-101.
- 26. "Registry identification number" means the random 20-digit alphanumeric identifier generated by the Department, containing at least four numbers and four letters, issued by the Department to a qualifying patient, designated caregiver, dispensary, or dispensary agent.
- 27. "Revocation" means the Department's final decision that an individual's registry identification card or a dispensary registration certificate is rescinded because the individual or the dispensary does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
- 28. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.

R9-17-102. Fees

- A.** An applicant submitting an application to the Department shall submit the following nonrefundable fees:
 - 1. Except as provided in ~~R9-17-303(F)~~ R9-17-303(D), for registration of a dispensary, \$5,000;
 - 2. To renew the registration of a dispensary, \$1,000;
 - 3. To change the location of a dispensary, \$2,500;
 - 4. To change the location of a dispensary's cultivation site or add a cultivation site, \$2,500;
 - 5. For a registry identification card for a:
 - a. Qualifying patient, except as provided in subsection (B), \$150;
 - b. Designated caregiver, \$200; and
 - c. Dispensary agent, \$500;
 - 6. For renewing a registry identification card for a:
 - a. Qualifying patient, except as provided in subsection (B), \$150;
 - b. Designated caregiver, \$200; and
 - c. Dispensary agent, \$500;
 - 7. For amending or changing a registry identification card, \$10; and
 - 8. For requesting a replacement registry identification card, \$10.
- B.** A qualifying patient may pay a reduced fee of \$75 if the qualifying patient submits, with the qualifying patient's application for a registry identification card or the qualifying patient's application to renew the qualifying patient's registry identification card, a copy of an eligibility notice or electronic benefits transfer card demonstrating current participation in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program.

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R9-17-103. Application Submission

- A. An applicant submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, or dispensary agent shall submit the application electronically in a Department-provided format.
- B. ~~A residence address or mailing address submitted as part of an application required by this Chapter shall be located in Arizona.~~ A residence address or mailing address submitted for a qualifying patient or designated caregiver as part of an application for a registry identification card is located in Arizona.
- C. A mailing address submitted for a principal officer or board member as part of a dispensary certificate registration application or as part of an application for a dispensary agent registration identification card is located in Arizona.

R9-17-107. Time-frames

- A. Within the administrative completeness review time-frame for each type of approval in Table 1.1, the Department shall:
 - 1. Issue a registry identification card or dispensary registration certificate;
 - 2. Provide a notice of administrative completeness to an applicant; or
 - 3. Provide a notice of deficiencies to an applicant, including a list of the information or documents needed to complete the application.
- B. An application for approval to operate a dispensary is not complete until the date the applicant states on a written notice provided to the Department that the dispensary is ready for an inspection by the Department.
- C. If the Department provides a notice of deficiencies to an applicant:
 - 1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;
 - 2. If the applicant does not submit the missing information or documents to the Department within the time-frame in Table 1.1, the Department shall consider the application withdrawn; and
 - 3. If the applicant submits the missing information or documents to the Department within the time-frame in Table 1.1, the substantive review time-frame begins on the date the Department receives the missing information or documents.
- D. Within the substantive review time-frame for each type of approval in Table 1.1, the Department:
 - 1. Shall issue or deny a registry identification card; ~~or dispensary registration certificate, or approval to operate a dispensary;~~
 - 2. May complete an inspection that may require more than one visit to a dispensary and, if applicable, the dispensary's cultivation site; and
 - 3. May make one written comprehensive request for more information, unless the Department and the applicant agree in writing to allow the Department to submit supplemental requests for information.
- E. If the Department issues a written comprehensive request or a supplemental request for information:
 - 1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives all of the information requested, and
 - 2. The applicant shall submit to the Department all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.
- F. If an applicant for an initial dispensary registration certificate is allocated a dispensary registration certificate as provided in ~~R9-17-302 and~~ R9-17-303, the Department shall provide a written notice to the applicant of the allocation of the dispensary registration certificate that contains the dispensary's registry identification number.
 - 1. After the applicant receives the written notice of the allocation, the applicant shall submit to the Department for each principal officer or board member for whom fingerprints were submitted:
 - a. An application for a dispensary agent registry identification card that includes:
 - i. The principal officer's or board member's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. The principal officer's or board member's residence address and mailing address;
 - iii. The county where the principal officer or board member resides;
 - iv. The principal officer's or board member's date of birth;
 - v. The identifying number on the applicable card or document in subsection (F)(1)(b)(i) through ~~(F)(1)(b)(v)~~ (v);
 - vi. The name and registry identification number of the dispensary;
 - vii. One of the following:
 - (1) A statement that the principal officer or board member does not currently hold a valid registry identification card, or
 - (2) The assigned registry identification number for each valid registry identification card currently held by the principal officer or board member;
 - viii. A statement signed by the principal officer or board member pledging not to divert marijuana to any individ-

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- ual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
- ix. An attestation that the information provided in and with the application is true and correct; and
- x. The signature of the principal officer or board member and the date the principal officer or board member signed;
- b. A copy the principal officer's or board member's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the principal officer's or board member's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the principal officer or board member:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U. S. Certificate of Naturalization, or
 - (3) U. S. Certificate of Citizenship;
- c. A current photograph of the principal officer or board member; and
- d. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.
- 2. After receipt of the information and documents in subsection (F)(1), the Department shall review the information and documents.
 - a. If the information and documents for at least one of the principal officers or board members complies with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:
 - i. A dispensary agent registry identification card to any principal officer or board member whose dispensary agent registry identification card application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and
 - ii. The dispensary registration certificate.
 - b. If the information and documents for a dispensary agent registry identification card application for any principal officer or board member does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the dispensary agent registry identification card application and provide notice to the principal officer or board member and to the dispensary that includes:
 - i. The specific reasons for the denial; and
 - ii. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- G. The Department shall issue:
 - 1. A registry identification card or an approval to operate a dispensary, as applicable, if the Department determines that the applicant complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
 - 2. For an applicant for a registry identification card, a denial that includes the reason for the denial and the process for requesting judicial review if:
 - a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 - b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information;
 - 3. For an applicant for a dispensary registration certificate, if the Department determines that the dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the Department is not issuing a dispensary registration certificate to the applicant because all available dispensary registration certificates have been allocated according to the criteria and processes in ~~R9-17-302 and~~ R9-17-303, written notice that:
 - a. The dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
 - b. The applicant was not allocated a dispensary registration certificate according to the criteria and processes in ~~R9-17-302 and~~ R9-17-303; and
 - c. The written notice is not a denial and is not considered a final decision of the Department subject to administrative review; or
 - 4. For an applicant for a dispensary registration certificate, a denial that includes the reason for the denial and the process for administrative review if:
 - a. The Department determines that a dispensary registration certificate application does not comply with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
 - b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

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Table 1.1. Time-frames

| Type of approval | Authority (A.R.S. § or A.A.C.) | Overall Time-frame (in working days) | Time-frame for applicant to complete application (in working days) | Administrative Completeness Time-frame (in working days) | Substantive Review Time-frame (in working days) |
|--|---|---|---|---|--|
| Changing a registry identification card | 36-2808 | 10 | 10 | 5 | 5 |
| Requesting a replacement registry identification card | 36-2804.06 | 5 | 5 | 2 | 3 |
| Applying for a registry identification card for a qualifying patient or a designated caregiver | 36-2804.02(A) | 15 | 30 | 5 | 10 |
| Amending a registry identification card for a qualifying patient or a designated caregiver | 36-2808 | 10 | 10 | 5 | 5 |
| Renewing a qualifying patient's or designated caregiver's registry identification card | 36-2804.02(A) and 36-2804.06 | 15 | 15 | 5 | 10 |
| Applying for a dispensary registration certificate | 36-2804 | 45 <u>30</u> | 10 | 45 <u>5</u> | 30 <u>25</u> |
| Applying for approval to operate a dispensary | R9-17-305 | 45 | 40 | 15 | 30 |
| Changing a dispensary location or adding or changing a dispensary's cultivation site location | 36-2804 and R9-17-307 | 90 | 90 | 30 | 60 |
| Renewing a dispensary registration certificate | 36-2804.06 | 15 | 15 | 5 | 10 |
| Applying for a dispensary agent registry identification card | 36-2804.01 and 36-2804.03 | 15 | 30 | 5 | 10 |
| Renewing a dispensary agent's registry identification card | 36-2804.06 | 15 | 15 | 5 | 10 |

R9-17-109. Notifications and Void Registry Identification Cards

- A.** The Department shall provide written notice that a cardholder's registry identification card is void and no longer valid under A.R.S. Title 36, Chapter 28.1 and this Chapter to a:
1. Qualifying patient when the Department receives notification from:
 - a. The qualifying patient that the qualifying patient no longer has a debilitating medical condition; or
 - b. The physician who provided the qualifying patient's written certification that the:
 - i. Qualifying patient no longer has a debilitating medical condition,
 - ii. Physician no longer believes that the qualifying patient would receive therapeutic or palliative benefit from the medical use of marijuana, or
 - iii. Physician believes that the qualifying patient is not using the medical marijuana as recommended;
 2. Designated caregiver when:
 - a. The Department receives notification from the designated caregiver's qualifying patient that the designated caregiver no longer assists the qualifying patient with the medical use of marijuana, or
 - b. The registry identification card for the qualifying patient that is listed on the designated caregiver's registry identification card is no longer valid; or
 3. Dispensary agent when:

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- a. The Department receives the written notification, required in R9-17-310(A)(9), that the dispensary agent:
 - i. No longer serves as a principal officer, board member, or medical director for the dispensary;
 - ii. Is no longer employed by ~~or contracted with~~ the dispensary; or
 - iii. No longer provides volunteer service at or on behalf of the dispensary; or
 - b. The registration certificate for the dispensary that is listed on the dispensary agent's registry identification card is no longer valid.
- B.** The Department shall void a qualifying patient's registry identification card:
- 1. When the Department receives notification that the qualifying patient is deceased; or
 - 2. For a qualifying patient under 18 years of age, when the qualifying patient's designated caregiver's registry identification card is revoked.
- C.** The written notice required in subsection (A) that a registry identification card is void is not a revocation and is not considered a final decision of the Department subject to judicial review.

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver

- A.** Except for a qualifying patient who is under 18 years of age, a qualifying patient is not required to have a designated caregiver.
- B.** A qualifying patient may have only one designated caregiver at any given time.
- C.** Except for a qualifying patient who is under 18 years of age, if the information submitted for a qualifying patient complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the information for the qualifying patient's designated caregiver does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue the registry identification card for the qualifying patient separate from issuing a registry identification card for the qualifying patient's designated caregiver.
- D.** If the Department issues a registry identification card to a qualifying patient under subsection (C), the Department shall continue the process for issuing or denying the qualifying patient's designated caregiver's registry identification card.
- E.** The Department shall not issue a designated caregiver's registry identification card before the Department issues the designated caregiver's qualifying patient's registry identification card.
- F.** Except as provided in subsection (G), to apply for a registry identification card, a qualifying patient shall submit to the Department the following:
- 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's:
 - i. First name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. Date of birth; and
 - iii. Gender;
 - b. Except as provided in subsection (F)(1)(i), the qualifying patient's residence address and mailing address;
 - c. The county where the qualifying patient resides;
 - d. The qualifying patient's e-mail address;
 - e. The identifying number on the applicable card or document in subsection (F)(2)(a) through (e);
 - f. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
 - g. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - h. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
 - i. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
 - j. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - k. An attestation that the information provided in the application is true and correct; and
 - l. The signature of the qualifying patient and date the qualifying patient signed;
 - 2. A copy of the qualifying patient's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the qualifying patient's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient:
 - i. Birth certificate verifying U.S. citizenship,

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- ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
- 3. A current photograph of the qualifying patient;
- 4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
- 5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:
 - a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
 - b. The qualifying patient's name and date of birth;
 - c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - d. An identification, initialed by the physician, of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
 - e. If the debilitating medical condition identified in subsection (F)(5)(d) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
 - f. A statement, initialed by the physician, that the physician:
 - i. Has established a medical record for the qualifying patient, and
 - ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
 - h. The date the physician conducted the in-person physical examination of the qualifying patient;
 - i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - i. Medical records including medical records from other treating physicians from the previous 12 months,
 - ii. Response to conventional medications and medical therapies, and
 - iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
 - k. A statement, initialed by the physician, that in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
 - l. A statement, initialed by the physician, that if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
 - m. An attestation that the information provided in the written certification is true and correct; and
 - n. The physician's signature and the date the physician signed;
- 6. If the qualifying patient is designating a caregiver, the following in a Department-provided format:
 - a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The designated caregiver's date of birth;
 - c. The designated caregiver's residence address and mailing address;
 - d. The county where the designated caregiver resides;
 - e. The identifying number on the applicable card or document in subsection (F)(6)(i)(i) through (v);
 - f. One of the following:
 - i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
 - g. An attestation signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 - h. A statement signed by the designated caregiver:
 - i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

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- i. A copy of the designated caregiver's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the designated caregiver's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U.S. Certificate of Naturalization, or
 - (3) U.S. Certificate of Citizenship;
 - j. A current photograph of the designated caregiver; and
 - k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - i. The designated caregiver's fingerprints on a fingerprint card that includes:
 - (1) The designated caregiver's first name; middle initial, if applicable; and last name;
 - (2) The designated caregiver's signature;
 - (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - (4) The designated caregiver's address;
 - (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - (6) The designated caregiver's date of birth;
 - (7) The designated caregiver's Social Security number;
 - (8) The designated caregiver's citizenship status;
 - (9) The designated caregiver's gender;
 - (10) The designated caregiver's race;
 - (11) The designated caregiver's height;
 - (12) The designated caregiver's weight;
 - (13) The designated caregiver's hair color;
 - (14) The designated caregiver's eye color; and
 - (15) The designated caregiver's place of birth; or
 - ii. If the designated caregiver's fingerprints and information required in subsection (F)(6)(k)(i) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and
7. The applicable fees in R9-17-102 for applying for:
- a. A qualifying patient registry identification card; and
 - b. If applicable, a designated caregiver registry identification card.
- G.** To apply for a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:
- 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's:
 - i. First name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. Date of birth; and
 - iii. Gender;
 - b. The qualifying patient's residence address and mailing address;
 - c. The county where the qualifying patient resides;
 - d. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - e. The identifying number on the applicable card or document in subsection (G)(5)(a) through (e);
 - f. The qualifying patient's custodial parent's or legal guardian's residence address and mailing address;
 - g. The county where the qualifying patient's custodial parent or legal guardian resides;
 - h. The qualifying patient's custodial parent's or legal guardian's e-mail address;
 - i. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;
 - j. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the patient's medical record maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;
 - k. The qualifying patient's custodial parent's or legal guardian's date of birth;

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- l. Whether the qualifying patient's custodial parent or legal guardian is requesting authorization for cultivating medical marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - n. Whether the individual submitting the application on behalf of the qualifying patient under 18 years of age is the qualifying patient's custodial parent or legal guardian;
 - o. One of the following:
 - i. A statement that the qualifying patient's custodial parent or legal guardian does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the qualifying patient's custodial parent or legal guardian for each valid registry identification card currently held by the qualifying patient's custodial parent or legal guardian;
 - p. An attestation that the information provided in the application is true and correct; and
 - q. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;
2. A current photograph of the:
 - a. Qualifying patient, and
 - b. Qualifying patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver;
 3. An attestation in a Department-provided format signed and dated by the qualifying patient's custodial parent or legal guardian that the qualifying patient's custodial parent or legal guardian has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 4. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
 - a. Allowing the qualifying patient's medical use of marijuana;
 - b. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - c. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 5. A copy of one of the following for the qualifying patient's custodial parent or legal guardian:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the qualifying patient's custodial parent or legal guardian U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient's custodial parent or legal guardian:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U. S. Certificate of Naturalization, or
 - iii. U. S. Certificate of Citizenship;
 6. If the individual submitting the application on behalf of a qualifying patient is the qualifying patient's legal guardian, a copy of documentation establishing the individual as the qualifying patient's legal guardian;
 7. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The qualifying patient's custodial parent or legal guardian's fingerprints on a fingerprint card that includes:
 - i. The qualifying patient's custodial parent or legal guardian's first name; middle initial, if applicable; and last name;
 - ii. The qualifying patient's custodial parent or legal guardian's signature;
 - iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
 - iv. The qualifying patient's custodial parent's or legal guardian's address;
 - v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
 - vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
 - vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;
 - viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
 - ix. The qualifying patient's custodial parent's or legal guardian's gender;
 - x. The qualifying patient's custodial parent's or legal guardian's race;
 - xi. The qualifying patient's custodial parent's or legal guardian's height;
 - xii. The qualifying patient's custodial parent's or legal guardian's weight;
 - xiii. The qualifying patient's custodial parent's or legal guardian's hair color;

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- xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
- xv. The qualifying patient's custodial parent's or legal guardian's place of birth; or
- b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (G)(7)(a) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the qualifying patient's custodial parent or legal guardian as a result of the application;
- 8. A written certification from the physician in subsection (G)(1)(i) and a separate written certification from the physician in (G)(1)(j) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:
 - a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
 - b. The qualifying patient's name and date of birth;
 - c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
 - d. If the debilitating medical condition identified in subsection (G)(9)(c) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
 - e. For the physician listed in subsection (G)(1)(i):
 - i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - ii. A statement, initialed by the physician, that the physician:
 - (1) Has established a medical record for the qualifying patient, and
 - (2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - iii. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
 - iv. The date the physician conducted the in-person physical examination of the qualifying patient;
 - v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - (1) Medical records including medical records from other treating physicians from the previous 12 months,
 - (2) Response to conventional medications and medical therapies, and
 - (3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database; and
 - vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient;
 - f. For the physician listed in subsection (G)(1)(j), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;
 - g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
 - h. A statement, initialed by the physician, that if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
 - i. An attestation that the information provided in the written certification is true and correct; and
 - j. The physician's signature and the date the physician signed; and
- 9. The applicable fees in R9-17-102 for applying for a:
 - a. Qualifying patient registry identification card, and
 - b. Designated caregiver registry identification card.
- H.** For purposes of this Article, "25 miles" includes the area contained within a circle that extends for 25 miles in all directions from a specific location.
- I.** For purposes of this Article, "residence address" when used in conjunction with a qualifying patient means:
 - 1. The street address including town or city and zip code assigned by a local jurisdiction; or
 - 2. For property that does not have a street address assigned by a local jurisdiction, the legal description of the property

on the title documents recorded by the assessor of the county in which the property is located.

R9-17-203. Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card

- A.** To add a designated caregiver or to request a change of a qualifying patient's designated caregiver, the qualifying patient shall submit to the Department, within 10 working days after the addition or the change, the following:
1. An application in a Department-provided format that includes:
 - a. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 - b. If applicable, the name of the qualifying patient's current designated caregiver and the date the designated caregiver last provided or will last provide assistance to the qualifying patient;
 - c. The name of the individual that the qualifying patient is designating as caregiver; and
 - d. The signature of the qualifying patient and date the qualifying patient signed;
 2. For the caregiver the qualifying patient is designating:
 - a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The designated caregiver's date of birth;
 - c. The designated caregiver's residence address and mailing address;
 - d. The county where the designated caregiver resides;
 - e. The identifying number on the applicable card or document in subsection (A)(2)(i)(i) through (v);
 - f. One of the following:
 - i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
 - g. An attestation in a Department-provided format signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 - h. A statement in a Department-provided format signed by the designated caregiver:
 - i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - i. A copy the designated caregiver's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the designated caregiver's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U. S. Certificate of Naturalization, or
 - (3) U. S. Certificate of Citizenship;
 - j. A current photograph of the designated caregiver; and
 - k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - i. The designated caregiver's fingerprints on a fingerprint card that includes:
 - (1) The designated caregiver's first name; middle initial, if applicable; and last name;
 - (2) The designated caregiver's signature;
 - (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - (4) The designated caregiver's address;
 - (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - (6) The designated caregiver's date of birth;
 - (7) The designated caregiver's Social Security number;
 - (8) The designated caregiver's citizenship status;
 - (9) The designated caregiver's gender;
 - (10) The designated caregiver's race;
 - (11) The designated caregiver's height;
 - (12) The designated caregiver's weight;
 - (13) The designated caregiver's hair color;
 - (14) The designated caregiver's eye color; and
 - (15) The designated caregiver's place of birth; or
 - ii. If the designated caregiver's fingerprints and information required in subsection (A)(2)(k)(i) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent within the previ-

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- ous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and
3. The applicable fee in R9-17-102 for applying for a designated caregiver registry identification card.
- B. To amend a qualifying patient's address on the qualifying patient's registry identification card when the qualifying patient or the qualifying patient's designated caregiver is authorized to cultivate marijuana, the qualifying patient shall submit to the Department, within 10 working days after the change in address, the following:
1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 2. The qualifying patient's new address;
 3. The county where the new address is located;
 4. The name of the qualifying patient's designated caregiver, if applicable;
 5. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 6. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
 7. The effective date of the qualifying patient's new address; and
 8. The applicable fee in R9-17-102 for applying to:
 - a. Amend a qualifying patient's registry identification card; and
 - b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.
- C. To request authorization to cultivate marijuana based on a qualifying patient's current address or a new address, the qualifying patient shall submit to the Department, if applicable within 10 working days after the change in address, the following:
1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 2. If the qualifying patient's address is a new address, the qualifying patient's:
 - a. Current address,
 - b. New address,
 - c. The county where the new address is located, and
 - d. The effective date of the qualifying patient's new address;
 3. The name of the qualifying patient's designated caregiver, if applicable;
 4. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 5. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use; and
 6. The applicable fee in R9-17-102 for applying to:
 - a. Amend a qualifying patient's registry identification card; and
 - b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

R9-17-302. ~~Evaluation of Dispensary Registration Certificate Applications~~ Repealed

- ~~A. If more than one dispensary registration certificate application, that is complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, is received for a single CHAA, the Department shall review the dispensary registration certificate applications for the CHAA to determine if:~~
- ~~1. Each applicant, principal officer, or board member associated with a dispensary registration certificate application has submitted Arizona resident personal income tax returns for the previous three years with the dispensary registration certificate application;~~
 - ~~2. Each applicant, principal officer, or board member associated with a dispensary registration certificate application:~~
 - ~~a. Is current on paying court-ordered child support;~~
 - ~~b. Is not delinquent paying taxes, interest, or penalties due to a governmental agency;~~
 - ~~c. Does not have an unpaid judgment due to a governmental agency; and~~
 - ~~d. Is not in default on a government-issued student loan;~~
 - ~~3. Each individual who has 20% or more interest in the dispensary is the applicant or a principal officer or board member of the dispensary;~~

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4. Each applicant, principal officer, or board member has never:
 - a. Filed for personal bankruptcy; or
 - b. Been a principal officer of a business entity that filed for bankruptcy; and
5. Documentation was submitted with the dispensary registration certificate application that:
 - a. Is from an in-state financial institution or an out-of-state financial institution;
 - b. Is dated within 30 days before the date the dispensary registration certificate application was submitted; and
 - c. Demonstrates that the entity applying for the dispensary registration certificate or a principal officer of the entity:
 - i. Has at least \$150,000 under the control of the entity or principal officer to begin operating the dispensary; and
 - ii. Has had control of the \$150,000 in subsection (A)(5)(c)(i) (A)(2)(c)(i) for at least 30 calendar days before the date the dispensary registration certificate application was submitted.
- B.** The Department shall process the dispensary registration certificate applications to allocate a dispensary registration certificate in a CHAA for each dispensary registration certificate assigned to the CHAA as follows:
 1. The Department shall review all dispensary registration certificate applications received for the CHAA to determine if each application meets the criteria in subsection (A)(1);
 2. If the Department determines that only one of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(1), the Department shall allocate a dispensary registration certificate to that applicant;
 3. If the Department determines that none of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(1), the Department shall randomly select one dispensary registration certificate application and allocate a dispensary registration certificate to that applicant;
 4. If the Department determines that more than one or all of the reviewed dispensary registration certificate applications meet the criteria in subsection (A)(1), the Department shall review those applications that meet the criteria in subsection (A)(1) for the criteria in subsection (A)(2);
 5. If the Department determines that only one of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(2), the Department shall allocate a dispensary registration certificate to that applicant;
 6. If the Department determines that none of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(2), the Department shall randomly select one dispensary registration certificate application that meets the criteria in subsection (A)(1) and allocate a dispensary registration certificate to that applicant; and
 7. If the Department determines that more than one or all of the reviewed dispensary registration certificate applications meet the criteria in subsection (A)(2), the Department shall review those applications that meet the criteria in subsection (A)(2) for the criteria in subsection (A)(3) randomly select one of the dispensary registration certificate applications that meet the criteria in subsection (A)(2) and allocate a dispensary registration certificate to that applicant;
 8. If the Department determines that only one of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(3), the Department shall allocate a dispensary registration certificate to that applicant;
 9. If the Department determines that none of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(3), the Department shall randomly select one dispensary registration certificate application that meets the criteria in subsection (A)(2) and allocate a dispensary registration certificate to that applicant;
 10. If the Department determines that more than one or all of the reviewed dispensary registration certificate applications meet the criteria in subsection (A)(3), the Department shall review those applications that meet the criteria in subsection (A)(3) for the criteria in subsection (A)(4);
 11. If the Department determines that only one of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(4), the Department shall allocate a dispensary registration certificate to that applicant;
 12. If the Department determines that none of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(4), the Department shall randomly select one dispensary registration certificate application that meets the criteria in subsection (A)(3) and allocate a dispensary registration certificate to that applicant;
 13. If the Department determines that more than one or all of the reviewed dispensary registration certificate applications meet the criteria in subsection (A)(4), the Department shall review those applications that meet the criteria in subsection (A)(4) for the criteria in subsection (A)(5);
 14. If the Department determines that only one of the reviewed dispensary registration certificate applications meets the criteria in subsection (A)(5), the Department shall allocate a dispensary registration certificate to that applicant;
 15. If the Department determines that none of the reviewed dispensary registration certificate applications or all of the dispensary registration certificate applications meet the criteria in subsection (A)(5), the Department shall randomly select one dispensary registration certificate application that meets the criteria in subsection (A)(4) and allocate a dispensary registration certificate to that applicant; and
 16. If the Department determines that more than one of the reviewed dispensary registration certificate applications meet the criteria in subsection (A)(5), the Department shall randomly select one of the dispensary registration certificate applications that meet the criteria in subsection (A)(5) and allocate a dispensary registration certificate to that applicant.
- C.** If an applicant submits more than one dispensary registration certificate application, the documentation in subsection

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~~(A)(5) (A)(2) needs to demonstrate there is at least \$150,000 available for each dispensary registration certificate application submitted.~~

R9-17-303. Dispensary Registration Certificate Allocation Process

- ~~A.~~ The Department shall review dispensary registration certificate applications and issue dispensary registration certificates according to the requirements in R9-17-107 and R9-17-302 this Section.
- ~~B.~~ Except as provided in subsection (C), the Department shall assign only one dispensary registration certificate allocation for each CHAA.
- ~~C.~~ A city or town that contains more than one CHAA may request the reassignment of a dispensary registration certificate allocation from one CHAA to another CHAA under the jurisdiction of the city or town by submitting a written request to the Department by June 1, 2011 30 calendar days after the posting in subsection (D) that contains:
- ~~1. The CHAAs involved in the reassignment;~~
 - ~~2. The reassignment requested; and~~
 - ~~3. The signature of the individual authorized to submit the request.~~
- ~~D.~~ The Department shall accept dispensary registration certificate applications for 30 calendar 10 working days beginning June 1, 2011 30 calendar days after the Department posts on the Department's website that the Department will be accepting dispensary registration certificate applications.
- ~~E.~~ If the Department receives:
- ~~1. Only one dispensary registration certificate application for a dispensary located in a CHAA that the Department determines is complete and is in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter by 60 calendar working days after June 1, 2011 the Department begins accepting applications, the Department shall allocate the dispensary registration certificate for the CHAA to that applicant; or~~
 - ~~2. More than one dispensary registration certificate application for a dispensary located in a CHAA that the Department determines are complete and are in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, by 60 calendar working days after June 1, 2011 the Department begins accepting applications, the Department shall allocate a dispensary registration certificate according to R9-17-302 this Section.~~
- ~~F.A.~~ In May of each Each calendar year beginning in ~~May 2012~~ 2013, the Department shall review current valid dispensary registration certificates to determine if the Department may issue additional dispensary registration certificates pursuant to A.R.S. § 36-2804(C).
- ~~1.~~ If the Department determines that the Department may issue additional dispensary registration certificates, the Department shall post, on the Department's web site, the information that the Department is accepting dispensary registration certificate applications, including the deadline for accepting dispensary registration certificate applications.
 - ~~a. The Department shall post the information in subsection (F)(1) by the last working day of the month (A)(1) at least 30 calendar days before the date the Department begins accepting applications.~~
 - ~~b. The deadline for submission of dispensary registration certificate applications is 30 calendar 10 working days after the date of posting in the Department begins accepting applications in subsection (F)(1)(a).~~
 - ~~c. Sixty calendar working days after the date of posting in subsection (F)(1)(a) the Department begins accepting applications, the Department shall determine if the Department received more dispensary registration certificate applications that are complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue.~~
 - ~~i. If the Department received more dispensary registration certificates certificate applications than the Department is allowed to issue, the Department shall allocate any available dispensary registration certificates according to the priorities established in subsection (G) (B).~~
 - ~~ii. If the Department is allowed to issue a dispensary registration certificate for each dispensary registration certificate application the Department received, the Department shall allocate the dispensary registration certificates to those applicants.~~
 - ~~2.~~ If the Department determines that the Department is not allowed to issue additional dispensary registration certificates, the Department shall, on the Department's web site:
 - ~~a. Post the information that the Department is not accepting dispensary registration certificate applications, and~~
 - ~~b. Maintain the information until the next review.~~
- ~~G.B.~~ Beginning in ~~May 2012~~ 2013, if the Department receives, by 60 ~~calendar~~ working days after the ~~date~~ the Department ~~begins accepting applications~~ posted the notice in subsection (F)(1)(a), more dispensary registration certificate applications that are complete and are in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue, the Department shall allocate the dispensary registration certificates according to the following criteria:
- ~~1.~~ If dispensary registration certificate applications are received for a county that does not contain a dispensary:
 - ~~a. If only one dispensary registration certificate application for a dispensary located in the county is received, the Department shall allocate the dispensary registration certificate to that applicant; or~~
 - ~~b. If more than one dispensary registration certificate application for a dispensary located in the county is received, the Department shall prioritize and allocate a dispensary registration certificate to an applicant whose proposed~~

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dispensary location will provide dispensary services to the most qualifying patients based on:

- i. The number of registry identification cards issued to qualifying patients who reside within 10 miles of the applicant's proposed dispensary location, and
 - ii. The number of dispensaries operating within 10 miles of the applicant's proposed dispensary location;
2. If there are additional dispensary registration certificates available after dispensary registration certificates are allocated according to subsection ~~(G)(1)~~ (B)(1), and if dispensary registration certificate applications are received for a location in a CHAA that does not contain a dispensary and whose dispensary registration certificate has not been reassigned under subsection (C), the Department shall allocate the dispensary registration certificates as follows:
- a. ~~If the Department receives dispensary registration certificate applications for a dispensary in more CHAAs, that do not contain a dispensary and whose dispensary registration certificates have not been reassigned under subsection (C), then there are dispensary registration certificates available, the~~ The Department shall prioritize and assign a dispensary registration certificate allocation to a CHAA based on which CHAA has the most registry identification cards issued to qualifying patients who reside within the CHAA;
 - b. ~~If the Department receives only one dispensary registration certificate application for a dispensary located in the a CHAA is received assigned a dispensary registration certificate allocation under this subsection,~~ the Department shall allocate the dispensary registration certificate to that applicant; ~~or~~
 - c. If the Department receives more than one dispensary registration certificate application for a dispensary located in ~~the a CHAA assigned a dispensary registration certificate allocation under this subsection,~~ the Department shall prioritize and allocate dispensary registration certificates to an applicant whose proposed dispensary location will provide dispensary services to the most qualifying patients based on:
 - i. The number of registry identification cards issued to qualifying patients who reside within 10 miles of the applicant's proposed dispensary location, and
 - ii. The number of dispensaries operating within 10 miles of the applicant's proposed dispensary location;
3. If there are additional dispensary registration certificates available after dispensary registration certificates are allocated according to subsections ~~(G)(1)~~ (B)(1) and (2), for all dispensary registration certificate applications not allocated a dispensary registration certificate pursuant to subsections ~~(G)(1)~~ (B)(1) and (2) and any other dispensary registration certificate applications received, the Department shall prioritize and allocate a dispensary registration certificate to an applicant whose proposed dispensary location will provide dispensary services to the most qualifying patients based on:
- a. The number of registry identification cards issued to qualifying patients who reside within 10 miles of the applicant's proposed dispensary location, and
 - b. The number of dispensaries operating within 10 miles of the applicant's proposed dispensary location; and
4. If there is a tie or a margin of 0.1% or less in the scores generated by applying the criteria in subsection ~~(G)~~ (B), the Department shall randomly select one dispensary registration certificate application and allocate a dispensary registration certificate to that applicant.

~~H.C.~~ For purposes of subsection ~~(G)~~ (B), "10 miles" includes the area contained within a circle that extends for 10 miles in all directions from a specific location.

~~I.D.~~ If the Department does not allocate a dispensary registration certificate to an applicant that had submitted a dispensary registration certificate application that the Department determined was complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process, the Department shall:

1. Provide a written notice to the applicant that states that, although the applicant's dispensary registration certificate application was complete and complied with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department did not allocate the applicant a dispensary registration certificate under the processes in ~~R9-17-302 and~~ this Section; and
2. Return \$1,000 of the application fee to the applicant.

~~J.E.~~ If the Department receives a dispensary registration certificate application at a time other than the time stated in subsection ~~(D)~~ ~~or (F)~~ (B), the Department shall return the dispensary registration certificate application, including the application fee, to the entity that submitted the dispensary registration certificate application.

R9-17-304. Applying for a Dispensary Registration Certificate

- A.** An individual shall not be an applicant, principal officer, or board member on:
 1. More than one dispensary registration certificate application for a location in a single CHAA, or
 2. More than five dispensary registration certificate applications for locations in different CHAAs.
- B.** If the Department determines that an individual is an applicant, principal officer, or board member on more than one dispensary registration certificate application for a CHAA or more than five dispensary registration certificate applications, the Department shall review the applications and provide the applicant on each of the dispensary registration certificate applications with a written comprehensive request for more information that includes the specific requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter that the dispensary registration certificate application does not comply with.
 1. If an applicant withdraws an application to comply with this Chapter and submits information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall process the applicant's remaining dispensary registration certificate applications according to this Chapter.

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2. If an applicant does not withdraw an application or submit information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue a denial to the applicant according to R9-17-322.
3. An application fee submitted with a dispensary registration certificate application in subsection (B) that is withdrawn is not refunded.

~~C.~~ Each principal officer or board member of a dispensary is an Arizona resident and has been an Arizona resident for the three years immediately preceding the date the dispensary submits a dispensary registration certificate application.

~~D-C.~~ To apply for a dispensary registration certificate, an entity shall submit to the Department the following:

1. An application in a Department-provided format that includes:
 - a. The legal name of the dispensary;
 - b. The physical address of the proposed dispensary;
 - c. The following information for the entity applying:
 - i. Name,
 - ii. Type of business organization,
 - iii. Mailing address,
 - iv. Telephone number, and
 - v. E-mail address;
 - d. The name of the individual designated to submit dispensary agent registry identification card applications on behalf of the dispensary;
 - e. The name and license number of the dispensary's medical director;
 - f. ~~Whether:~~
 - i. Any individual who has 20% or more interest in the dispensary is not the applicant or a principal officer or board member of the dispensary; or
 - ii. The applicant has submitted documentation that:
 - (1) Is from an in-state financial institution or an out-of-state financial institution;
 - (2) Is dated within 30 calendar days before the date the dispensary registration certificate application was submitted; and
 - (3) Demonstrates that the entity applying for the dispensary registration certificate or a principal officer of the entity has at least \$150,000 under the control of the entity or principal officer to begin operating the dispensary and has had control of the \$150,000 for at least 30 calendar days before the date the dispensary registration certificate application was submitted;
- ~~g-f.~~ The name, residence address, and date of birth of each:
 - i. Principal officer, and
 - ii. Board member;
- ~~h-g.~~ For each principal officer or board member, whether the principal officer or board member:
 - i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked;
 - ii. Is a physician currently providing written certifications for qualifying patients;
 - iii. Is a law enforcement officer; or
 - iv. Is employed by or a contractor of the Department;
 - ~~v. Has submitted Arizona resident personal income tax returns for the previous three years with the dispensary registration certificate application;~~
 - ~~vi. Is current on paying court-ordered child support;~~
 - ~~vii. Is delinquent paying taxes, interest, or penalties due to a governmental agency;~~
 - ~~viii. Has an unpaid judgment due to a governmental agency;~~
 - ~~ix. Is in default on a government-issued student loan;~~
 - ~~x. Has ever filed for personal bankruptcy; or~~
 - ~~xi. Has ever been a principal officer of a business entity that filed for bankruptcy;~~
- ~~i-h.~~ Whether the ~~dispensary entity~~ agrees to allow the Department to submit supplemental requests for information;
- ~~j-i.~~ A statement that, if the dispensary is issued a dispensary registration certificate, the dispensary will not operate until the dispensary is inspected and obtains an approval to operate from the Department;
- ~~k-j.~~ An attestation that the information provided to the Department to apply for a dispensary registration certificate is true and correct; and
- ~~l-k.~~ The signatures of the principal officers of the dispensary according to R9-17-301(A) and the date the principal officers signed;
2. If the entity applying is one of the business organizations in R9-17-301(A)(2) through (7), a copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents that include:
 - a. The name of the business organization,
 - b. The type of business organization, and

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- c. The names and titles of the individuals in R9-17-301(A) and (B);
3. For each principal officer and board member:
 - a. An attestation signed and dated by the principal officer or board member that the principal officer or board member has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - ~~b. An attestation signed and dated by the principal officer or board member that the principal officer or board member is an Arizona resident and has been an Arizona resident for at least three consecutive years immediately preceding the date the dispensary submitted the dispensary certificate application;~~
 - ~~e-b.~~ For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - i. The principal officer's or board member's fingerprints on a fingerprint card that includes:
 - (1) The principal officer's or board member's first name; middle initial, if applicable; and last name;
 - (2) The principal officer's or board member's signature;
 - (3) If different from the principal officer or board member, the signature of the individual physically rolling the principal officer's or board member's fingerprints;
 - (4) The principal officer's or board member's residence address;
 - (5) If applicable, the principal officer's or board member's surname before marriage and any names previously used by the principal officer or board member;
 - (6) The principal officer's or board member's date of birth;
 - (7) The principal officer's or board member's Social Security number;
 - (8) The principal officer's or board member's citizenship status;
 - (9) The principal officer's or board member's gender;
 - (10) The principal officer's or board member's race;
 - (11) The principal officer's or board member's height;
 - (12) The principal officer's or board member's weight;
 - (13) The principal officer's or board member's hair color;
 - (14) The principal officer's or board member's eye color; and
 - (15) The principal officer's or board member's place of birth; or
 - ii. If the fingerprints and information required in subsection ~~(D)(3)(e)(i)~~ (C)(3)(b)(i) were submitted to the Department as part of an application for a designated caregiver or a dispensary agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the principal officer or board member as a result of the application; and
 - ~~d. A copy of one of the following containing the principal officer's or board member's name and current residence address:~~
 - ~~i. A non-expired Arizona driver's license;~~
 - ~~ii. A non-expired Arizona identification card;~~
 - ~~iii. A current lease agreement;~~
 - ~~iv. A mortgage statement for the most recent tax year;~~
 - ~~v. A tax statement issued by a governmental agency for the most recent tax year;~~
 - ~~vi. A utility bill dated within 60 calendar days before the date of the dispensary application;~~
 - ~~vii. A paycheck or statement of direct deposit issued by an employer dated within 60 calendar days before the date of the dispensary application;~~
 - ~~viii. Current motor vehicle, life, or health insurance policy; or~~
 - ~~ix. Any other document that demonstrates that the principal officer or board member is an Arizona resident;~~
4. Policies and procedures that comply with the requirements in this Chapter for:
 - a. Inventory control,
 - b. Qualifying patient recordkeeping,
 - c. Security, and
 - d. Patient education and support;
5. As required in A.R.S. § 36-2804(B)(1)(d), a sworn statement signed and dated by the individual or individuals in R9-17-301(A) certifying that the dispensary is in compliance with any local zoning restrictions;
6. Documentation from the local jurisdiction where the dispensary's proposed physical address is located that:
 - a. There are no local zoning restrictions for the dispensary's location, or
 - b. The dispensary's location is in compliance with any local zoning restrictions;
7. Documentation of:
 - a. Ownership of the physical address of the proposed dispensary, or
 - b. Permission from the owner of the physical address of the proposed dispensary for the entity applying for a dispensary registration certificate to operate a dispensary at the physical address;
8. The dispensary's by-laws including:
 - a. The names and titles of individuals designated as principal officers and board members of the dispensary;
 - b. Whether the dispensary plans to:

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- i. Cultivate marijuana;
 - ii. Acquire marijuana from qualifying patients, designated caregivers, or other dispensaries;
 - iii. Sell or provide marijuana to other dispensaries;
 - iv. Transport marijuana;
 - v. Prepare, sell, or dispense marijuana-infused edible food products;
 - vi. Prepare, sell, or dispense marijuana-infused non-edible products;
 - vii. Sell or provide marijuana paraphernalia or other supplies related to the administration of marijuana to qualifying patients and designated caregivers;
 - viii. Deliver medical marijuana to qualifying patients; or
 - ix. Provide patient support and related services to qualifying patients;
 - c. Provisions for the disposition of revenues and receipts to ensure that the dispensary operates on a not-for-profit basis; and
 - d. Provisions for amending the dispensary's by-laws;
9. A business plan demonstrating the on-going viability of the dispensary on a not-for-profit basis that includes:
- a. A description of and total dollar amount of expenditures already incurred to establish the dispensary or to secure a dispensary registration certificate by the individual or business organization applying for the dispensary registration certificate,
 - b. A description and total dollar amount of monies or tangible assets received for operating the dispensary from entities other than the individual applying for the dispensary registration certificate or a principal officer or board member associated with the dispensary including the entity's name and the interest in the dispensary or the benefit the entity obtained,
 - c. Projected expenditures expected before the dispensary is operational,
 - d. Projected expenditures after the dispensary is operational, and
 - e. Projected revenue; and
10. The applicable fee in R9-17-102 for applying for a dispensary registration certificate.
- ~~E-D.~~** Before an entity with a dispensary registration certificate begins operating a dispensary, the entity shall apply for and obtain an approval to operate a dispensary from the Department.

R9-17-308. Renewing a Dispensary Registration Certificate

- A.** An entity with a dispensary registration certificate that has not submitted an application for approval to operate a dispensary to the Department at least 60 calendar days before the expiration date of the dispensary registration certificate or has not obtained an approval to operate a dispensary issued by the Department is prohibited from renewing the dispensary registration certificate.
- B.** To renew a dispensary registration certificate, a dispensary that has an approval to operate a dispensary issued by the Department, shall submit to the Department, at least 30 calendar days before the expiration date of the dispensary's current dispensary registration certificate, the following:
- 1. An application in a Department-provided format that includes:
 - a. The legal name of the dispensary;
 - b. The registry identification number for the dispensary;
 - c. The physical address of the dispensary;
 - d. The name of the entity applying;
 - e. The name of the individual designated to submit dispensary agent registry identification card applications on behalf of the dispensary;
 - f. The name and license number of the dispensary's medical director;
 - g. The dispensary's hours of operation during which the dispensary is available to dispense medical marijuana to qualifying patients and designated caregivers;
 - h. The name, address, date of birth, and registry identification number of each:
 - i. Principal officer,
 - ii. Board member, and
 - iii. Dispensary agent;
 - i. For each principal officer or board member, whether the principal officer or board member:
 - i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked,
 - ii. Is a physician currently providing written certifications for qualifying patients,
 - iii. Is a law enforcement officer, or
 - iv. Is employed by or a contractor of the Department;
 - j. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
 - k. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
 - l. An attestation that the information provided to the Department to renew the dispensary registration certificate is true and correct; and

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- m. The signature of the individual or individuals in R9-17-301(A) and the date the individual or individuals signed;
- ~~2. An attestation from each principal officer and board member, signed and dated by the principal officer or board member, that the principal officer or board member is an Arizona resident and has been an Arizona resident for at least three consecutive years immediately preceding the date the dispensary submitted the application to renew the dispensary registration certificate;~~
- ~~3.2.~~ If the application is for renewing a dispensary registration certificate that was initially issued within the previous 12 months, a copy of the dispensary's approval to operate a dispensary issued by the Department;
- ~~4.3.~~ A copy of an annual financial statement for the previous year, or for the portion of the previous year the dispensary was operational, prepared according to generally accepted accounting principles;
- ~~5.4.~~ A report of an audit by an independent certified public accountant of the annual financial statement required in subsection ~~(B)(4)~~ (B)(3); and
- ~~6.5.~~ The applicable fee in R9-17-102 for applying to renew a dispensary registration certificate.

R9-17-309. Inspections

- A. Submission of an application for a dispensary registration certificate constitutes permission for entry to and inspection of the dispensary and, if applicable, the dispensary's cultivation site.
- B. Except as provided in subsection (D), an onsite inspection of a dispensary or the dispensary's cultivation site shall occur at a date and time agreed to by the dispensary and the Department that is no later than five working days after the date the Department submits a written request to the dispensary to schedule the certification or compliance inspection, unless the Department agrees to a later date and time.
- C. The Department shall not accept allegations of a dispensary's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.
- D. If the Department receives an allegation of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an unannounced inspection of the dispensary or the dispensary's cultivation site.
- E. If the Department identifies a violation of ~~statute or rule of~~ A.R.S. Title 36, Chapter 28.1 or this Chapter during an inspection of a dispensary or the dispensary's cultivation site:
 - 1. The Department shall provide the dispensary with a written notice that includes the specific rule or statute that was violated; and
 - 2. The dispensary shall notify the Department in writing, with a postmark date within 20 working days after the date of the notice of violations, identifying the corrective actions taken and the date of the correction.

R9-17-310. Administration

- A. A dispensary shall:
 - 1. Ensure that the dispensary is operating and available to dispense medical marijuana to qualifying patients and designated caregivers at least 30 hours weekly between the hours of 7:00 a.m. and 10:00 p.m.;
 - 2. Develop, document, and implement policies and procedures regarding:
 - a. Job descriptions and employment contracts, including:
 - i. Personnel duties, authority, responsibilities, and qualifications;
 - ii. Personnel supervision;
 - iii. Training in and adherence to confidentiality requirements;
 - iv. Periodic performance evaluations; and
 - v. Disciplinary actions;
 - b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
 - c. Inventory control, including:
 - i. Tracking;
 - ii. Packaging;
 - iii. Accepting marijuana from qualifying patients and designated caregivers;
 - iv. Acquiring marijuana from other dispensaries; and
 - v. Disposing of unusable marijuana, which may include submitting any unusable marijuana to a local law enforcement agency;
 - d. Qualifying patient records, including purchases, denials of sale, any delivery options, confidentiality, and retention; and
 - e. Patient education and support, including:
 - i. Availability of different strains of marijuana and the purported effects of the different strains;
 - ii. Information about the purported effectiveness of various methods, forms, and routes of medical marijuana administration;
 - iii. Methods of tracking the effects on a qualifying patient of different strains and forms of marijuana; and
 - iv. Prohibition on the smoking of medical marijuana in public places;

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3. Maintain copies of the policies and procedures at the dispensary and provide copies to the Department for review upon request;
 4. Review dispensary policies and procedures at least once every 12 months from the issue date of the dispensary registration certificate and update as needed;
 5. Employ or contract with a medical director;
 6. Ensure that each dispensary agent has the dispensary agent's registry identification card in the dispensary agent's immediate possession when the dispensary agent is:
 - a. ~~Is working~~ Working or providing volunteer services at the dispensary or the dispensary's cultivation site, or
 - b. ~~Is transporting~~ Transporting marijuana for the dispensary;
 7. Ensure that a dispensary agent accompanies any individual other than another dispensary agent associated with the dispensary when the individual is present in the enclosed, locked facility where marijuana is cultivated by the dispensary;
 8. Not allow an individual who does not possess a dispensary agent registry identification card issued under the dispensary registration certificate to:
 - a. Serve as a principal officer or board member for the dispensary,
 - b. Serve as the medical director for the dispensary,
 - c. Be employed by the dispensary, or
 - d. Provide volunteer services at or on behalf of the dispensary;
 9. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a dispensary agent no longer:
 - a. Serves as a principal officer or board member for the dispensary,
 - b. Serves as the medical director for the dispensary,
 - c. Is employed by the dispensary, or
 - d. Provides volunteer services at or on behalf of the dispensary;
 10. Document and report any loss or theft of marijuana from the dispensary to the appropriate law enforcement agency;
 11. Maintain copies of any documentation required in this Chapter for at least 12 months after the date on the documentation and provide copies of the documentation to the Department for review upon request;
 12. Post the following information in a place that can be viewed by individuals entering the dispensary:
 - a. If applicable, the dispensary's approval to operate;
 - b. The dispensary's registration certificate;
 - c. The name of the dispensary's medical director and the medical director's license number on a sign at least 20 centimeters by 30 centimeters; and
 - d. The hours of operation during which the dispensary will dispense medical marijuana to a qualifying patient or a designated caregiver;
 13. Not lend any part of the dispensary's income or property without receiving adequate security and a reasonable rate of interest;
 14. Not purchase property for more than adequate consideration in money or cash equivalent;
 15. Not pay compensation for salaries or other compensation for personal services that is in excess of a reasonable allowance;
 16. Not sell any part of the dispensary's property or equipment for less than adequate consideration in money or cash equivalent; and
 17. Not engage in any other transaction that results in a substantial diversion of the dispensary's income or property.
- B.** If a dispensary cultivates marijuana, the dispensary shall cultivate the marijuana in an enclosed, locked facility.

R9-17-311. Submitting an Application for a Dispensary Agent Registry Identification Card

Except as provided in R9-17-107(F), to obtain a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by ~~or contracted with~~ the dispensary, or providing volunteer services at or on behalf of the dispensary, the dispensary shall submit to the Department the following for each dispensary agent:

1. An application in a Department-provided format that includes:
 - a. The dispensary agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The dispensary agent's residence address and mailing address;
 - c. The county where the dispensary agent resides;
 - d. The dispensary agent's date of birth;
 - e. The identifying number on the applicable card or document in subsection (5)(a) through (e);
 - f. The name and registry identification number of the dispensary; and
 - g. The signature of the individual in ~~R9-17-304(D)(1)(d)~~ R9-17-304(C)(1)(d) or R9-17-308(B)(1)(e), as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date the individual signed;
2. An attestation signed and dated by the dispensary agent that the dispensary agent has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;

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3. One of the following:
 - a. A statement that the dispensary agent does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the dispensary agent for each valid registry identification card currently held by the dispensary agent;
4. A statement in a Department-provided format signed by the dispensary agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A copy of the dispensary agent's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the dispensary agent's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the dispensary agent:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U. S. Certificate of Naturalization, or
 - iii. U. S. Certificate of Citizenship;
6. A current photograph of the dispensary agent;
7. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The dispensary agent's fingerprints on a fingerprint card that includes:
 - i. The dispensary agent's first name; middle initial, if applicable; and last name;
 - ii. The dispensary agent's signature;
 - iii. If different from the dispensary agent, the signature of the individual physically rolling the dispensary agent's fingerprints;
 - iv. The dispensary agent's address;
 - v. If applicable, the dispensary agent's surname before marriage and any names previously used by the dispensary agent;
 - vi. The dispensary agent's date of birth;
 - vii. The dispensary agent's Social Security number;
 - viii. The dispensary agent's citizenship status;
 - ix. The dispensary agent's gender;
 - x. The dispensary agent's race;
 - xi. The dispensary agent's height;
 - xii. The dispensary agent's weight;
 - xiii. The dispensary agent's hair color;
 - xiv. The dispensary agent's eye color; and
 - xv. The dispensary agent's place of birth; or
 - b. If the dispensary agent's fingerprints and information required in subsection (7)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card or a dispensary agent registry identification card for another dispensary, the registry identification number on the registry identification card issued to the dispensary agent as a result of the application; and
8. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.

R9-17-312. Submitting an Application to Renew a Dispensary Agent's Registry Identification Card

To renew a dispensary agent's registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by ~~or contracted with~~ the dispensary, or providing volunteer services at or on behalf of the dispensary, the dispensary shall submit to the Department, at least 30 calendar days before the expiration of the dispensary agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
 - a. The dispensary agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The dispensary agent's residence address and mailing address;
 - c. The county where the dispensary agent resides;
 - d. The dispensary agent's date of birth;
 - e. The registry identification number on the dispensary agent's current registry identification card;
 - f. The name and registry identification number of the dispensary; and
 - g. The signature of the individual in ~~R9-17-304(D)(1)(d)~~ R9-17-304(C)(1)(d) or R9-17-308(B)(1)(e) designated to submit dispensary agent applications on the dispensary's behalf and the date the individual signed;
2. If the dispensary agent's name in subsection (1)(a) is not the same name as on the dispensary agent's current registry identification card, one of the following with the dispensary agent's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or

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- c. The photograph page in the dispensary agent's U.S. passport;
3. A statement in a Department-provided format signed by the dispensary agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
4. A current photograph of the dispensary agent;
5. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The dispensary agent's fingerprints on a fingerprint card that includes:
 - i. The dispensary agent's first name; middle initial, if applicable; and last name;
 - ii. The dispensary agent's signature;
 - iii. If different from the dispensary agent, the signature of the individual physically rolling the dispensary agent's fingerprints;
 - iv. The dispensary agent's address;
 - v. If applicable, the dispensary agent's surname before marriage and any names previously used by the dispensary agent;
 - vi. The dispensary agent's date of birth;
 - vii. The dispensary agent's Social Security number;
 - viii. The dispensary agent's citizenship status;
 - ix. The dispensary agent's gender;
 - x. The dispensary agent's race;
 - xi. The dispensary agent's height;
 - xii. The dispensary agent's weight;
 - xiii. The dispensary agent's hair color;
 - xiv. The dispensary agent's eye color; and
 - xv. The dispensary agent's place of birth; or
 - b. If the dispensary agent's fingerprints and information required in subsection (5)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card or a dispensary agent registry identification card for another dispensary, the registry identification number on the registry identification card issued to the dispensary agent as a result of the application; and
6. The applicable fee in R9-17-102 for applying to renew a dispensary agent's registry identification card.

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

- A. The Department shall deny an application for a dispensary registration certificate or a renewal if:
 1. For an application for a dispensary registration certificate, the physical address of the building or, if applicable, the physical address of the dispensary's cultivation site is within 500 feet of a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application;
 2. A principal officer or board member:
 - ~~a. Is not a resident of Arizona or has not been a resident of Arizona for at least three consecutive years immediately preceding the date the application for the dispensary registration certificate was submitted;~~
 - ~~b-a.~~ Has been convicted of an excluded felony offense;
 - ~~e-b.~~ Has served as a principal officer or board member for a dispensary that:
 - i. Had the dispensary registration certificate revoked, or
 - ii. Did not obtain an approval to operate the dispensary within the first year after the dispensary registration certificate was issued;
 - ~~d-c.~~ Is under 21 years of age;
 - ~~e-d.~~ Is a physician currently providing written certifications for medical marijuana for qualifying patients;
 - ~~f-e.~~ Is a law enforcement officer; or
 - ~~g-f.~~ Is an employee or contractor of the Department; or
 3. The application or the dispensary does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter.
- B. The Department may deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary provides false or misleading information to the Department.
- C. The Department shall revoke a dispensary's registration certificate if:
 1. The dispensary:
 - a. Operates before obtaining approval to operate a dispensary from the Department;
 - b. Dispenses, delivers, or otherwise transfers marijuana to an entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or
 - c. Acquires usable marijuana or mature marijuana plants from any entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or
 2. A principal officer or board member has been convicted of an excluded felony offense.

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- D. The Department may revoke a dispensary registration certificate if the dispensary does not:
 - 1. Comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 - 2. Implement the policies and procedures or comply with the statements provided to the Department with the dispensary's application.
- E. If the Department denies a dispensary registration certificate application, the Department shall provide notice to the applicant that includes:
 - 1. The specific reason or reasons for the denial, and
 - 2. All other information required by A.R.S. § 41-1076.
- F. If the Department revokes a dispensary registration certificate, the Department shall provide notice to the dispensary that includes:
 - 1. The specific reason or reasons for the revocation; and
 - 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3399.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 22, 2012.

[R12-244]

PREAMBLE

- 1. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
 - R9-28-101 Amend
 - R9-28-509 New Section
 - R9-28-510 Amend
- 2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 - Authorizing statute: A.R.S. § 36-2932
 - Implementing statute: A.R.S. § 36-2932
- 3. **The effective date of the rule:**
 - January 1, 2013
 - The agency requested an effective date of January 1, 2013. As required by A.R.S. § 41-1032(A)(4), the rulemaking provides a benefit to the public and a penalty is not associated with a violation of the rule.
- 4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
 - Notice of Rulemaking Docket Opening: 18 A.A.R. 2084, August 24, 2012
 - Notice of Proposed Rulemaking: 18 A.A.R. 2050 August 24, 2012
- 5. **The agency's contact person who can answer questions about the rulemaking:**
 - Name: Mariaelena Ugarte
 - Address: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034
 - Telephone: (602) 417- 4693
 - Fax: (602) 253-9115
 - E-mail: AHCCCSrules@azahcccs.gov
 - Web site: www.azahcccs.gov

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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The AHCCCS Administration is proposing rulemaking that provides elderly and disabled AHCCCS long-term care beneficiaries (AHCCCS beneficiary) flexibility and control with respect to the way in which attendant services and supports are provided in their homes or other community based settings. Attendant care services consist of nonprofessional assistance with activities of daily living and other services such as housekeeping. AHCCCS currently has a rule regarding this topic, Self-Directed Attendant Care (A.A.C. R9-28-508), which was adopted as a final rule in 2011. Since that time, Congress adopted section 1915(k) of the Social Security Act, the Community First Choice (CFC) state plan option. AHCCCS plans to elect the "Agency with Choice" CFC state plan option. Both, Agency with Choice and Self-Directed Attendant Care are member-directed service models. The models are not a service, but rather a manner in which services are delivered. By way of example of the differences, under Self-Directed Attendant Care, the AHCCCS beneficiary or the beneficiary's legal guardian serves as the legal employer of the paid caregiver. Under Agency with Choice, the agency serves as the legal employer of the paid caregiver while AHCCCS beneficiaries or their individual representatives assume some of the employer-based responsibilities. ALTCS members who receive attendant care services may choose the available service model best suited to their needs: CFC, Self-Directed Attendant Care or the traditional service model where the Contractor directs the provision of attendant care services.

7. A reference to any study relevant to the rule that the agency reviewed and either to relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

A study was not referenced or relied on when revising the regulations for Agency with Choice.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The adoption of the Agency with Choice, member-directed service model is not expected to increase the number of services nor the quantity of service hours. The adoption of the member-directed service model, and subsequent approval of a state plan amendment from the Centers for Medicare and Medicaid Services, avails AHCCCS the opportunity to receive an increased six-percent Federal Medical Assistance Percentage for services and supports provided to AHCCCS beneficiaries that elect the Agency with Choice, member directed service model. Services and supports eligible for the increased FMAP must meet criteria required by the Centers for Medicare and Medicaid Services. Thus, the adoption of the model will result in state general fund savings of at least 3M per year.

Agencies that have offered a comparable service model option to AHCCCS beneficiaries have noted, as a result of the shared employer-based responsibilities, reductions in administrative costs. Similarly, they have noted an increase in employee retention and customer satisfaction.

AHCCCS beneficiaries will have access to more than one member-directed service model in lieu of receiving attendant care services and supports under a traditional service model. In the event the AHCCCS beneficiary does not want to act as the legal employer and assume all employer-based responsibilities of the employer of the paid caregiver, they can still assume, under the Agency with Choice service model, some of the employer-based responsibilities while receiving assistance from the agency that employs the paid caregiver.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The definition of "individual representative" was moved from the general definition section to the rule applicable only to the Agency with Choice model. No other changes were made between the proposed rulemaking and the final rulemaking.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The following comments were received as of the close of the comment period 5 p.m., September 24, 2012. The majority of the concerns were in relation to the definition of "individual representative" where the representative cannot be a paid caregiver as well as the representative. As a result of these concerns, the agency in conjunction with CMS has chosen to limit the definition of "individual representative" to the agency with choice option model.

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| Item # | Comment From | Comment | Analysis/Recommendation |
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| 1. | William Woody (Consumer Direct AZ) | <p>We use the personal representative to bring in another set of eyes to ensure the care and the quality of care is received. It works very well especially in rural areas. Personal representative does not act as the paid caregiver. Supportive of the definition of Individual Representative.</p> <p>Please accept this correction to my public comment during today's hearing on Arizona's implementation of the Community First Choice Option. I am not in favor of the rule as written if the rule requires the Personal Representative (PR) to be present during the delivery of service. If this were to be the case then someone will have to compensate the PR for their time. I assume that increasing costs to ALTCS is not the goal.</p> <p>Additionally, in each of the other 9 states we provide Medicaid personal assistance in, requiring the PR to be present is considered an unnecessary, onerous, and impractical burden to the consumer, as it would require them finding not just a personal care worker but also a PR to present during the shift, thereby creating an unfair accessibility hurdle to those using the PR option.</p> | <p>The rule does not require the individual representative to be present during the delivery of care. The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option.</p> |
| 2. | Barbara Jones (parent) | <p>According to this law it will bring another level of bureaucracy, which was not the intent when we wrote the law. The parents who actively participate are affected. The reason the agencies were brought in was to remove the state from the equation. The agencies that came about were established to not cost the state more money. Now you are developing another layer that the parents must go through, and parents get the short end of stick. Parents actively participate in their child's care but cannot be expected to do everything. I currently receive 80 hours a month for attendant care and habilitation. He requires more care than what I currently receive. The agency that is responsible/accountable to the state should be the one to develop the additional safeguards. This should be the agencies responsibility not the state.</p> <p>Who is in charge of this agency? What is the difference from Angels with Wings and this agency? Why have these different agencies? Why is it necessary to have this agency and why do you need to come to us? What safeguards is there that are not being spelled out?</p> <p>-It should be the role of the agencies and/or the support coordinators to ensure the quality and provide safeguards to the provision of services.</p> <p>-Members are not getting all of the services they need. Additionally, family members (guardians) who are paid caregivers are only getting paid for a small portion of the services that are needed to support the family member and, therefore, saving the state money.</p> <p>-Individual Representative policy will require them to get someone (an "outsider") involved who doesn't understand the system, their child.</p> <p>How does it affect parents in the traditional model? Why are you saying that we can care for our child and not get paid for it?</p> | <p>The Agency with Choice model is a proposed new, member-directed option for ALTCS members living in their own home and receiving attendant care, personal care, homemaker or habilitation services. Member-directed options are not service, but rather pertain to the way in which services are delivered. They allow members an opportunity to have more control over how services are provided. Currently AHCCCS only has one member-directed option, Self-Directed Attendant Care (for individuals who are elderly or have physical disabilities) and the Independent Provider Network (for individuals with developmental disabilities). For both of these options, the member is the legal employer of the caregivers. AHCCCS is utilizing the Community First Choice Option (Section 1015 (k) of the Social Security Act) to provide an additional member-directed option. For members who may desire to direct their own care, but are not interested in being the legal employer of the caregiver, AHCCCS is proposing the Agency with Choice option. Under this option, the member and the agency enter into a co-employment relationship. The agency serves as the legal employer (hires, fires and provides required training for the caregiver). The member may assume one or more of the following employer-based responsibilities including recruiting, selecting, dismissing, determining duties, scheduling, specifying training to meet the unique needs of the member and supervising the paid caregivers on a day-to-day basis. Agencies contracted by the ALTCS Contractors will have the opportunity to offer this option to members. The Agency with Choice, member-directed option does not create a new service system or agency.</p> <p>The Individual Representative conflict of interest provision will be applied only to members choosing the Agency with Choice option. It was during the Agency with Choice, member-directed option development process that AHCCCS was enlightened about CMS' (Centers for Medicare and Medicaid Services) requirement for the conflict of interest provision (prohibition of Individual Representatives also serving paid caregivers). The conflict of interest provision does not prohibit non-legally responsible family members from being paid caregivers. The rulemaking does prohibit any paid caregiver, including a family member, from also acting as the individual's representative when receiving services through the Agency with Choice model.</p> |

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| 3. | Ruth Chavez (Good Neighbor) | Does this apply to both DD and HCBS? How was the individual representation incorporated by William Woody? We are having difficulty as an agency. What if there isn't a third person? Would we need to bring in a paid caregiver to be the representative? | The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option. Yes Caregivers can be part of the service plan process; another individual would need to authorize the plan. It cannot be the same person providing the HCBS services to that individual that needs services authorized. |
| 4. | Carolyn Griffiths (Consumer Direct AZ) | Supportive of this model and the conflicts of interest policy. | |
| 5. | Kim Simmons (DES/DDD) | Clarification needed for the Natural Support services definition. | Under the federal rule the natural support services are provided voluntarily, if the services are medically necessary they are provided by the contractor. |
| 6. | Alisa Nelson (parent) | -AHCCCS did not widely publicize that they were contemplating the conflict of interest policy nor did they widely publicize the opportunity to provide input. -It should be the role of the agencies and/or the support coordinators to ensure the quality and provide safeguards to the provision of services -Members are not getting all of the services they need. Additionally, family members (guardians) who are paid caregivers are only getting paid for a small portion of the services that are needed to support the family member and, therefore, saving the state money. -Individual Representative policy will require them to get someone (an "outsider") involved who doesn't understand the system, their child -Guardians are legally responsible to make sure the individual's needs are met. | AHCCCS posted the Notice of Proposed Rulemaking on August 2, 2012. AHCCCS sent correspondence to the Division of Developmental Disabilities on three occasions throughout the months of August and September 2012. The information was sent out via a list serve and posted on the web site. AHCCCS has a new member-directed options web page that provides information on the proposed Agency with Choice option including information on the federal rules, proposed state rules and how to provide public comment. |
| 7. | Unknown friend | We deserve the right to be seen as we are, and not in light the government sees. You cannot understand our position; we give up our life for our children who need our help. | This comment was received at the oral proceeding in relation to the issue of the individual representative not being a paid caregiver. As a result of these comments, the Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option. |
| 8. | Unknown caller | Whether or not a parent/guardian/representative can get paid to be the ADH provider? | Attempted to call, no response received. In general a parent/guardian/representative can get paid if they are the paid caregiver. The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option. |
| 9. | Stuart Goldman (guardian) | Written comment stating: One commenter questioned if an individual's representative assisting the individual to self-direct and manage their services can be paid as part of the service plan. Response: Individuals acting as a representative are not paid to do so. Individuals acting as a representative also should not be a paid caregiver of an individual receiving CFC services and supports. This arrangement was prohibited in the section 1915(j) regulation, to avoid a conflict of interest. We are modifying the definition of "Individual's representative" to continue this prohibition. It is not clear from the text if a guardian CAN waive the representative obligation. Can one co-guardian request in writing that the other assume the representative role for CFC while she serves as the provider? I am unsure about how single guardians can meet their obligation to the State and waive the obligation at the same time. | The terms of each guardianship may vary depending on the court order granting guardianship. The AHCCCS Administration cannot provide guidance on individual cases or legal advice. We recommend you consult with an attorney. |

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| | <p>It is unclear if an agency can act as the representative because of the conflict issue and it would also have to be uncompensated for the time.</p> <p>Since it is DDD and an agency that enter into a contract, can the agency be assumed to be the provider while a parent, etc. acts just as an employee of the agency?</p> <p>Why is the change being made? What problem is it addressing? What other solutions were considered?</p> <p>Is the DDD process legal, since guardians are appointed by the Superior Court of Arizona and they might not be able to waive their role without a court order?</p> <p>If the parent continues to provide the service, who can be the representative? What qualifications need to be met? Who approves?</p> <p>Does the representative need to sign the various DDD forms monthly forms confirming the services were received?</p> <p>If so, how can this be accomplished if the representative does not live with the client? Does this just become a rubber stamp?</p> <p>At the ISP meetings, if the parent can not be the representative and has a friend, etc. act in that role, is it not likely the representative would parrot the parent's desire, so what is gained?</p> <p>If no representative can be assigned, how is the ISP meeting conducted? Does DDD represent the client? If so, is it legal for DDD to play two roles simultaneously?</p> <p>We understand that in the corresponding IEP (Individual Educational Plan) process situation, the court must appoint a surrogate parent to represent the client to prevent the state from playing both roles.</p> <p>Can a married couple who share caregiving also share the responsible person's role? Can the husband sign for the services performed by the wife and vice versa?</p> <p>If not, can one of the married couple act as the representative while the other is the provider? How often can the roles be reversed? Annually? Monthly? Weekly? Hourly? What documentation is required by DDD?</p> <p>Are there any circumstances under which the rule can be waived?</p> <p>If so, what are they?</p> <p>Has this change been vetted by DDD with the State legislature and Superior Court? It is likely that some parents/guardians/representatives may seek relief by appeals to DDD, Representatives of the State legislature, or suits to the Superior court so it would be good to be aware of rulings previously provided.</p> | <p>The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option. The provider agency cannot also be an individual representative even if the provider agency does not charge for time associated with service planning.</p> <p>The parent who is an employee of the agency is a paid caregiver. The paid caregiver cannot also be an individual representative.</p> <p>This change is being made in response to federal regulations affecting the Medicaid program. As such, AHCCCS does not have flexibility to implement other solutions.</p> <p>In general, orders appointing guardians do not require the guardian to be a paid caregiver. This regulation does not require the guardian to relinquish their responsibilities as the guardian, although the guardian may have to forego acting as the paid caregiver.</p> <p>The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option.</p> <p>See Federal regulation 42 CFR 441. <i>Individual's representative means a parent, family member, guardian, advocate, or other person authorized by the individual to serve as a representative in connection with the provision of CFC services and supports.</i></p> <p><i>This authorization should be in writing, when feasible, or by another method that clearly indicates the individual's free choice. An individual's representative may not also be a paid caregiver of an individual receiving services an supports under this subpart.</i></p> <p>See DDD for process and guidance of the various forms.</p> <p>The expectation is that the individual representative is acting on behalf of the member, not the member's parent.</p> <p>If a member is unable to represent themselves, a guardian should be appointed. DDD cannot act as the client's individual representative because that would present a conflict of interest.</p> <p>These are federal regulations separate and apart from the state judicial process.</p> |
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| 10. | Steven Goodrich (Assistant Attorney General) | <p>This message sets out questions regarding the proposed amendments to A.A.C. R9-28-101(B) (adding definitions of “Individual’s representative” and “natural support services”), and the proposed new A.A.C. R9-28-509 (adding the “Agency with Choice” service model for members of the Arizona Long Term Care System, or “ALTCS”).</p> <p>A. Definition of “individual’s representative”</p> <p>1. The “individual’s representative” definition is set out in R9-28-101, which contains definitions that apply to Title 9, Chapter 28 of the Arizona Administrative Code. The “individual’s representative” term is used in R9-28-509 (the new rule creating the “Agency with Choice” service model), but does not appear anywhere else in Chapter 28. Does AHCCCS intend that the last sentence of the definition of “individual’s representative”, which prohibits an “individual’s representative” from working as a paid caregiver with respect to the individual, apply generally to all ALTCS members and all services and supports provided to the member?</p> <p>2. The proposed definition uses the words “individual” and “individual’s representative”, the same terminology used in the federal rule regarding the Community First Choice program (42 C.F.R. Section 441.505). However, “individual” is not defined in the AHCCCS rules; the term “member” as defined in A.R.S. 36-2931 and R9-28-901 is used in the AHCCCS rules. Wouldn’t it be clearer to use the words “member” and “member’s representative” instead of “individual” and “individual’s representative” in the proposed AHCCCS rule?</p> <p>3. The definition of “Co-employment relationship” set out in proposed R9-28-509(A) uses the phrase “ALTCS member or authorized representative”. Is the “authorized representative” different than the “Individual’s representative”?</p> <p>4. In proposed R9-28-509(C), the phrase “member or the member’s individual’s representative” is used in the first sentence; then, the phrase “member or authorized representative” is used in the second sentence. Wouldn’t it be clearer to use the phrase “member or member’s representative” throughout?</p> <p>5. May a family member with rights and duties under law (such as the parent of a minor or guardian of an adult) with respect to an ALTCS member, so long as some other person is designated as the “individual’s representative” (some possible examples are set out in nos. 6 and 7 below)?</p> <p>6. If one parent is designated as the “individual’s representative”, may that parent’s spouse be a paid caregiver, even though under community property law the parent serving as the individual’s representative has rights to the consideration being paid to the caregiver/spouse?</p> <p>7. May the guardian of an ALTCS member serve as a paid caregiver if the guardian appoints some other person as the ALTCS member’s individual’s representative? Would such an arrangement effectively eliminate any conflict of interest, since presumably the guardian would retain the right to terminate the designation of the individual’s representative?</p> <p>B. “Agency with Choice” Service Model</p> <p>1. Proposed R9-28-509(B): will AHCCCS set out criteria for establishing, amending, and terminating the “co-employment relationship” contemplated by the Agency with Choice model?</p> | <p>The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option.</p> <p>Agreed, the definition of “individual representative” has been revised.</p> <p>Agreed, changed rule language.</p> <p>Agreed, changed rule language.</p> <p>Under 42 CFR 440.167 the parent of a minor child may not be a paid provider of personal care or attendant care services. Unless otherwise defined by the agency.</p> <p>Yes, the agency will provide further guidance to contractors through policy.</p> |
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| | | <p>2. The proposed rule does not mention the federal “Community First Choice” program or the rules relating to the program (42 CFR 441, Subpart K, 42 CFR §§ 441.500-591).</p> <p>Will every ALTCS member electing “Agency with Choice” (and the agency working with that member) be subject to those rules?</p> <p>C. Definition of “Natural Support Services”</p> <p>1. The definition of “Natural Support Services” set out in proposed R9-28-101(B) states that such services “cannot supplant other covered services”. Does that mean that in determining the appropriate amount of covered services to be provided by paid caregivers, the current level of natural support services should be disregarded?</p> | <p>Yes.</p> <p>At the outset of the service planning process, the appropriate level of medically necessary covered services should be determined. To the extent natural supports are voluntarily provided, the contractor’s responsibility for arranging paid caregivers is reduced.</p> |
| 11. | Heidi Davis (Consumer Direct AZ) | <p>Arizona Consumer Direct fully supports the Community First Choice option. Besides bringing needed revenue to the State of Arizona, it also increases the control and choice individuals have over services and the people who provide them.</p> <p>A current barrier for Arizona's Community First Choice plan being approved by the federal government is that legal guardians can be service providers. This problem is easily remedied by the use of personal representatives chosen by the guardian. The personal representative adds an element of quality control by approving time sheets and overseeing that services are delivered according to the care/service plan. Representatives are used in the ten (10) states where Consumer Direct provides services. Some of the states are very rural which does not seem to impede locating a personal representative. Consumer Direct does not believe it necessary that the representative be present when services are delivered which is the current expectation in the SDAC rule. This expectation can make it difficult for guardians and individuals in need of services to find a personal representative. Consumer Direct is committed to assisting guardians locate representatives that can provide a needed level of oversight so that individuals in need of services can self - direct their own care.</p> <p>We commend Arizona Long Term Care and the citizens of Arizona for pursuing the Community First Choice option.</p> | <p>Thank you for your support.</p> |

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| 12. | Sharon Gordon (parent) | <p>I understand the proposed rule affects HCBS services under ALTCS. Does it also affect residential options such as Adult Developmental Homes or adult family homes where an individual lives with a family who is reimbursed for care vs. a group home?</p> <p>I am opposed to this ruling as the guardian of a disabled adult. I was just in the process of redoing my will and guardianship. I had made arrangements for a friend to become the guardian of my adult disabled child in my will, with the understanding that the guardian would also provide care which was reimbursable under current ALTCS rules. Under the proposed rule no advocate, guardian, parent, relative, or representative can be reimbursed for care provided to the beneficiary. It is very unfair and can even be emotionally harmful to some individuals who are bonded to long term friends or providers whom we as parents consider to be the safest option to care for our children when we can no longer provide care ourselves, only to now be told that those persons can no longer be paid for such care if they care enough to become our child's guardian or representative.</p> <p>I understand the financial savings to Arizona's General Fund by doing this...well, I don't really understand it unless it is some type of governmental blackmail, but I do understand that it will save 3 million dollars. <u>However it is an absolute insult to have this rule touted as an effort to expand the availability of member-directed service options for individuals enrolled in ALTCS. This does not benefit individuals enrolled in ALTCS who need guardians or representatives or advocates....in hurts them.</u> I expect my comments to be heard as if I were personally appearing at the hearing. This is a "no" support vote. I wonder how many people at the hearing will be aware that the rule is already set to be implemented in January. How is that appropriate when the final hearing hasn't even been held?</p> <p>According to the social security act, attendant care CAN be provided by a family member. So why is that being disallowed under the new rule?</p> <p>(k) ³⁵⁵ State Plan Option to Provide Home and Community based Attendant Services and Supports.—</p> <p>(A) Availability.—The State shall make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision, or cueing—</p> <p>(III) <u>provided by an individual who is qualified to provide such services, including family members (as defined by the Secretary).</u></p> | <p>Yes.</p> <p>The Agency with Choice option is being implemented to provide members with an additional option to direct and manage their own care.</p> <p>The Administration has reconsidered the term "individual representative: and has limited its application to the Agency with Choice option.</p> |
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12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**
Not applicable
- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
Section 1915k of the Social Security Act provides the state the authority to implement Agency with Choice option but the rule is not more stringent than the federal law.
- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

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Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rules were previously made, amended or repealed as emergency rules. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 1. DEFINITIONS

Section

R9-28-101. General Definitions

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section

R9-28-509. ~~Reserved~~ Agency with Choice

R9-28-510. Case Management

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition Section or Citation

“210” 42 CFR 435.211

“217” 42 CFR 435.217

“236” 42 CFR 435.236

“Acute” R9-28-301

“ADHS” A.A.C. R9-22-101

“ADL” R9-28-101

“Administration” A.R.S. § 36-2931

“Advance notice” R9-28-411

“Aged” R9-28-402

“Aggregate” A.A.C. R9-22-701

“Aggression” R9-28-301

“AHCCCS” A.A.C. R9-22-101

“AHCCCS registered provider” A.A.C. R9-22-101

“ALTCS” R9-28-101

“ALTCS acute care services” R9-28-401

“Alternative HCBS setting” R9-28-101

“Ambulance” A.R.S. § 36-2201

“Ambulation” R9-28-301

“Applicant” A.A.C. R9-22-101

“Assessor” R9-28-301

~~“Associating time with an event and an action” R9-28-301~~

“Auto-assignment algorithm” or “Algorithm” A.A.C. R9-22-1701

“Bathing” R9-28-301

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“Bathing or showering” R9-28-301
“Bed hold” R9-28-102
“Behavior intervention” R9-28-102
“Behavior management services” A.A.C. R9-22-1201
“Behavioral health evaluation” A.A.C. R9-22-1201
“Behavioral health medical practitioner” A.A.C. R9-22-1201
“Behavioral health professional” A.A.C. R9-20-101
“Behavioral health service” A.A.C. R9-20-101
“Behavioral health technician” A.A.C. R9-20-101
“Billed charges” A.A.C. R9-22-701
“Blind” 42 U.S.C. 1382c(a)(2)
“Capped fee-for-service” A.A.C. R9-22-101
~~“Caregiver training” R9-28-301~~
“Case management plan” R9-28-101
“Case management” R9-28-1101
“Case manager” R9-28-101
“Case record” A.A.C. R9-22-101
“Categorically-eligible” A.A.C. R9-22-101
“Certification” R9-28-501
“Certified psychiatric nurse practitioner” A.A.C. R9-22-1201
“CFR” R9-28-101
“Child” A.A.C. R9-22-1503
~~“Chronic” R9-28-301~~
“Clarity of communication” R9-28-301
“Clean claim” A.R.S. § 36-2904
~~“Climbing stairs or a ramp” R9-28-301~~
“Clinical supervision” A.A.C. R9-22-201
“CMS” A.A.C. R9-22-101
“Community mobility” R9-28-301
“Community spouse” R9-28-401
“Consecutive days” ~~R9-28-901~~ R9-28-801
“Continence” R9-28-301
“Contract” A.A.C. R9-22-101
“Contract year” A.A.C. R9-22-101
“Contractor” A.R.S. § 36-2901
“Cost avoid” A.A.C. R9-22-1201 or A.A.C. R9-22-1001
“County of fiscal responsibility” R9-28-701
“Covered services” R9-28-101
“CPT” A.A.C. R9-22-701
“Crawling and standing” R9-28-301
“CSRD” R9-28-401
“Current” R9-28-301
“Day” A.A.C. R9-22-101 or A.A.C. R9-22-1101
“De novo hearing” 42 CFR 431.201
“Department” A.R.S. § 36-2901
“Developmental disability” or “DD” A.R.S. § 36-551
“Diagnostic services” A.A.C. R9-22-101

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“Director” A.A.C. R9-22-101
“Disabled” R9-28-402
“Disenrollment” A.A.C. R9-22-1701
“Disruptive behavior” R9-28-301
“DME” A.A.C. R9-22-101
“Dressing” R9-28-301
“Eating” R9-28-301
“Eating or drinking” R9-28-301
~~“Elderly” R9-28-301~~
“Emergency medical services for the non-FES member” A.A.C. R9-22-201
“Emotional and cognitive functioning” R9-28-301
“Employed” R9-28-1320
“Encounter” A.A.C. R9-22-701
“Enrollment” A.A.C. R9-22-1701
“EPD” R9-28-301
“E.P.S.D.T. services” 42 CFR 440.40(b)
“Estate” A.R.S. § 14-1201
“Experimental services” ~~R9-22-101~~ A.A.C. R9-22-203
“Expressive verbal communication” R9-28-301
“Facility” A.A.C. R9-22-101
“Factor” 42 CFR 447.10
“Fair consideration” R9-28-401
“FBR” A.A.C. R9-22-101
“Federal financial participation” or “FFP” 42 CFR 400.203
“Fee-For-Service” or “FFS” A.A.C. R9-22-101
“File” ~~R9-28-901~~ R9-28-801
“First continuous period of institutionalization” R9-28-401
“Food preparation” R9-28-301
“Frequency” R9-28-301
“Functional assessment” R9-28-301
“Grievance” A.A.C. R9-34-202
“Grooming” R9-28-301
“GSA” A.A.C. R9-22-101
“Guardian” A.R.S. § 14-5311
“Hand use” R9-28-301
“HCBS” or “Home and community based services” A.R.S. §§ 36-2931
“Health care practitioner” A.A.C. R9-22-1201
“History” R9-28-301
“Home” R9-28-101 and ~~R9-28-901~~ R9-28-801
“Home health services” A.A.C. R9-22-201
“Hospice” A.R.S. § 36-401
“Hospital” A.A.C. R9-22-101
“ICF-MR” or “Intermediate care facility for the mentally retarded” 42 U.S.C. 1396d(d)
“IADL” R9-28-101
“IHS” A.A.C. R9-22-101
“IMD” or “Institution for mental diseases” 42 CFR 435.1010
“Immediate risk of institutionalization” R9-28-301

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"Individual Representative" R9-28-101
"Institutionalized" R9-28-401
"Institutionalized spouse" R9-28-101
"Interested Party" R9-28-106
"Intergovernmental agreement" or "IGA" R9-28-1101
"Intervention" R9-28-301
"JCAHO" R9-28-101
"License" or "licensure" A.A.C. R9-22-101
~~"Limited or occasional" R9-28-301~~
"Medical assessment" R9-28-301
"Medical or nursing services and treatments" or "services and treatments" R9-28-301
"Medical record" A.A.C. R9-22-101
"Medical services" A.R.S. § 36-401
~~"Medical supplies" R9-22-201~~
"Medically eligible" R9-28-401
"Medically necessary" A.A.C. R9-22-101
"Member" A.R.S. § 36-2931 and R9-28-901
"Mental disorder" A.R.S. § 36-501
"MMMNA" R9-28-401
"Mobility" R9-28-301
"Natural Support Services" R9-28-101
"Noncontracting provider" A.R.S. § 36-2931
"Nursing facility" or "NF" 42 U.S.C. 1396r(a)
"Occupational therapy" A.A.C. R9-22-201
"Orientation" R9-28-301
"Partial care" A.A.C. R9-22-1201
"PAS" R9-28-103
"Personal hygiene" R9-28-301
"Pharmaceutical service" A.A.C. R9-22-201
~~"Physical interruption" R9-28-301~~
~~"Physical participation" R9-28-301~~
"Physical therapy" A.A.C. R9-22-201
"Physically disabled" R9-28-301
~~"Physically lift" R9-28-301~~
"Physician" A.A.C. R9-22-101
"Physician consultant" R9-28-301
~~"Place" R9-28-901~~
"Post-stabilization care services" 42 CFR 438.114
"Practitioner" ~~R9-22-201~~ A.A.C. R9-22-101
"Primary care provider" or "(PCP)" A.A.C. R9-22-101
"Primary care provider services" A.A.C. R9-22-201
"Prior authorization" A.A.C. R9-22-101
"Prior period coverage" or "PPC" A.A.C. R9-22-101
"Program contractor" A.R.S. § 36-2931
"Provider" A.R.S. § 36-2931
"Psychiatrist" A.A.C. R9-22-1201
"Psychologist" A.A.C. R9-22-1201

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“Psychosocial rehabilitation services” A.A.C. R9-22-201
“Qualified behavioral health service provider” R9-28-1101
“Quality management” A.A.C. R9-22-501
“Radiology” A.A.C. R9-22-101
“Reassessment” R9-28-103
“Recover” R9-28-901
“Redetermination” R9-28-401
“Referral” A.A.C. R9-22-101
“Regional behavioral health authority” or “RBHA” A.R.S. § 36-3401
“Reinsurance” A.A.C. R9-22-701
~~“Remembering an instruction and demonstration” R9-28-301~~
“Representative” R9-28-401
“Resistiveness” R9-28-301
~~“Resistiveness or rebelliousness” R9-28-301~~
“Respiratory therapy” A.A.C. R9-22-201
“Respite care” R9-28-102
“RFP” A.A.C. R9-22-101
“Room and board” R9-28-102
“Rolling and sitting” R9-28-301
“Running or wandering away” R9-28-301
“Scope of services” R9-28-102
“Section 1115 Waiver” A.R.S. § 36-2901
“Self-injurious behavior” R9-28-301
“Sensory” R9-28-301
“Seriously mentally ill” or “SMI” A.R.S. § 36-550
“Social worker” R9-28-301
“Special diet” R9-28-301
“Speech therapy” A.A.C. R9-22-201
“Spouse” R9-28-401
“SSA” 42 CFR 1000.10
“SSI” 42 CFR 435.4
“Subcontract” A.A.C. R9-22-101
“TEFRA lien” ~~R9-28-901~~ R9-28-801
“Therapeutic leave” R9-28-501
“Toileting” R9-28-301
“Transferring” R9-28-301
“TRBHA” A.A.C. R9-22-1201
“Tribal contractor” R9-28-1101
“Tribal facility” A.R.S. § 36-2981
“Utilization ~~management~~ management/review” A.A.C. R9-22-501
“Ventilator dependent” R9-28-102
“Verbal or physical threatening” R9-28-301
“Vision” R9-28-301
“Wandering” R9-28-301
“Wheelchair mobility” R9-28-301

B. General definitions. In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article

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1, the following words and phrases have the following meanings unless the context of the Chapter explicitly requires another meaning:

“ADL” or “Activities of Daily Living” mean activities a member must perform daily for the member’s regular day-to-day necessities, including but not limited to mobility, transferring, bathing, dressing, grooming, eating, and toileting.

“ALTCS” means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.

“Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS, including:

For a person with a developmental disability specified in A.R.S. § 36-551:

Community residential setting defined in A.R.S. § 36-551;

Group home defined in A.R.S. § 36-551;

State-operated group home under A.R.S. § 36-591;

Group foster home under A.A.C. R6-5-5903;

Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;

Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and

Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and

For a person who is ~~EPD~~ Elderly and Physically Disabled (EPD) under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:

Adult foster care defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;

Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;

Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;

Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and

Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14.

“Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s care, and the continued monitoring and reassessment of the member’s need for services.

“Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or has a minimum of two years of experience in providing case management services to a person who is EPD.

“CFR” means *Code of Federal Regulations*, unless otherwise specified in this Chapter.

“Covered services” means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

“Home” means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

Health care institution under A.R.S. § 36-401;

Residential care institution under A.R.S. § 36-401;

Community residential setting under A.R.S. § 36-551; or

Behavioral health facility under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IADL” or “Instrumental Activities of Daily Living” mean activities related to independent living that a member must perform, including but not limited to:

Preparing meals,

Managing money,

Shopping for groceries or personal items,

Performing light or heavy housework, and

Use of the telephone.

“IHS” means the Indian Health Service.

“Institutionalized spouse” means the same as defined in 42 U.S.C. 1396r-5.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations

“Natural Support Services” are services provided voluntarily by a person not legally obligated to provide those services. The services are specified in the service plan as described under R9-28-510 and cannot supplant other covered services.

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-509. Reserved Agency with Choice

A. Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings specific to this Section:

“Agency” means a provider of home and community based services, other than an individual, that has a co-employment relationship with one or more members for purposes of this Section.

“Co-employment relationship” means a situation where the Agency serves as the legal employer of record and the ALTCS member or authorized representative assumes certain responsibilities related to directing and or managing care.

“Individual’s representative” means a parent, family member, guardian, advocate, or other person authorized by the member to serve as a representative in connection with the provision of services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the individual’s free choice. An individual’s representative may not also be a paid caregiver of an individual receiving services and supports.

“Standardized training” means minimum training standards required of all paid caregivers by the Administration as specified in contract.

B. Purpose. The Agency with Choice program is an ALTCS member directed service model for the provision of home and community based services. Under this model, the ALTCS member or individual’s representative and the agency enter into a co-employment relationship.

C. In lieu of receiving HCBS services under a traditional service model, a member or the member’s individual’s representative may choose to participate in the Agency with Choice service model. Under the Agency with Choice service model, the agency shall maintain the authority to hire and fire paid caregivers and provide standardized training to the caregiver, and the member or individual representative may elect to recruit, select, dismiss, determine duties, schedule, specify training to meet the unique needs of the member, and supervise the paid caregivers on a day-to-day basis.

D. Setting. This program is applicable to ALTCS members who reside in their own home.

E. A member who chooses to receive services under the Agency with Choice service model is not precluded from receiving medically necessary, cost-effective services and supports from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the contractor.

R9-28-510. Case Management

A. A program contractor shall assign to each member a case manager to identify, plan, coordinate, monitor, and reassess the need for and provision of long-term care services.

B. A case manager shall:

1. Ensure that appropriate ALTCS placement and services are provided for a member within 30 days of enrollment;
2. Develop a service plan by:
 - a. Completing a case management plan when a member is enrolled in ALTCS and authorizing services for a member who continues to be financially and medically eligible for services;
 - b. Ensuring that a member participates in the preparation of the member’s case management plan;
 - c. Specifying the paid and natural support services to be received by the member, including the duration, scope of services, units of service, frequency of service delivery, provider of services, and effective time period; and
 - d. Coordinating with the primary care provider in determining the necessary services for the member, including hospital and medical services;
3. Submit a written justification to the case manager’s supervisor to include HCBS in the case management plan if the services exceed 80 percent of the institutional cost;
4. Manage a case management plan by:
 - a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
 - b. Monitoring receipt of services by a member;
5. Assist the member to maintain or progress toward the highest level of functioning;
6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or provider;
7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets the definition of a behavioral health professional under A.A.C. R9-20-101.

C. A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration.